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Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER S—RIGHTS-OF-WAY

[Circular 2100]

PART 244—RIGHTS-OF-WAY OTHER THAN FOR RAILROAD PURPOSES AND FOR LOGGING ROADS ON THE OREGON AND CALIFORNIA AND COOS BAY REVESTED LANDS

Subpart D—Rights-of-Way Through Public Lands and Reservations for Telephone and Telegraph Lines, Electric Power Transmission Lines, Radio and Television Sites, and for Pipe Lines, Canals, Ditches, and Water Plants Under the Acts of February 15, 1901 and March 4, 1911 [17]

New paragraphs (c) and (d) are added to § 244.43, and new paragraphs (c), (d), and (e) are added to § 244.44, reading as follows:

§ 244.43 Transmission lines.

* * * * *

(c) The application and maps shall specify the width of the right-of-way desired. Rights-of-way for power lines will be limited to 50 feet on each side of the centerline unless sufficient justification is furnished for a greater width and it is otherwise authorized by law.

(d) If the line is to have a nominal voltage of 33 kilovolts or over, the application should include a one-line diagram of the proposed line and the immediate interconnecting facilities including power plants and substations, a power flow diagram for proposed line and connecting major lines showing conditions under normal use, and typical structure drawings of proposed line showing construction dimensions and list of materials.

§ 244.44 Terms and conditions.

* * * * *

(c) Each application for authority to survey, locate, commence construction work and maintain a facility for the generation of electric power and energy or for the transmission or distribution of electric power and energy of 33 kilovolts or higher under this subpart shall be referred by the authorized officer to the Secretary of the Interior to determine the relationship of the proposed facility to the power-marketing program of the United States. Where the proposed facility will not conflict with the program of the United States the authorized officer, upon notification to that effect, will proceed to act upon the application. In the case of necessary changes respecting the proposed location, construction, or utilization of the facility in order to eliminate conflicts with the power-marketing program of the United States, the authorized officer shall obtain from the applicant written consent to or compliance with such requirements before taking further action on the application: *Provided, however,* That if increased costs to the applicant will result from changes to eliminate conflicts with the power-marketing program of the United States, and it is determined that a right-of-way should be granted, such changes will be required upon equitable contract arrangements covering costs and other appropriate factors.

(d) The applicant shall make provision, or bear the reasonable cost (as may be determined by the Secretary) of making provision for avoiding inductive or conductive interference between any transmission facility or other works constructed, operated, or maintained by it on the right-of-way authorized under the grant and any radio installation, telephone line, or other communication facilities existing when the right-of-way is authorized or any such installation, line or facility thereafter constructed or operated by the United States or any agency thereof. This provision shall not relieve the applicant from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive or conductive interference.

(e) An applicant for a right-of-way for a transmission facility having a voltage of 33 kilovolts or more must, in addition to the requirements of § 244.3, execute and file with its application a stipulation agreeing to accept the right-of-way grant subject to the following conditions:

(1) In the event the United States, pursuant to law, acquires the applicant's transmission or other facilities constructed on or across such right-of-way, the price to be paid by the United States shall not include or be affected by any value of the right-of-way granted to the applicant under authority of the regulations of this part.

(2) The Department of the Interior shall be allowed to utilize for the transmission of electric power and energy any surplus capacity of the transmission facility in excess of the capacity needed by the holder of the grant (subsequently referred to in this paragraph as "holder") for the transmission of electric power and energy in connection with the holder's operations, or to increase the capacity of the transmission facility at the Department's expense and to utilize the increased capacity for the transmission of electric power and energy. Utilization by the Department of surplus or increased capacity shall be subject to the following terms and conditions:

(i) When the Department desires to utilize surplus capacity thought to exist in the transmission facility, notification will be given to the holder and the holder shall furnish to the Department within 30 days a certificate stating whether the transmission facility has any surplus capacity not needed by the holder for the

[17] In addition to the material under this heading, the General Regulations under Subpart A of this part should be consulted.

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transmission of electric power and energy in connection with the holder's operations and, if so, the amount of such surplus capacity.

(ii) Where the certificate indicates that there is no surplus capacity or that the surplus capacity is less than that required by the Department the authorized officer may call upon the holder to furnish additional information upon which its certification is based. Upon receipt of such additional information the authorized officer shall determine, as a matter of fact, if surplus capacity is available and, if so, the amount of such surplus capacity.

(iii) In order to utilize any surplus capacity determined to be available, or any increased capacity provided by the Department at its own expense, the Department may interconnect its transmission facilities with the holder's transmission facility in a manner conforming to approved standards of practice for the interconnection of transmission circuits.

(iv) The expense of interconnection will be borne by the Department, and the Department will at all times provide and maintain adequate protective equipment to insure the normal and efficient operation of the holder's transmission facilities.

(v) After any interconnection is completed, the holder shall operate and maintain its transmission facilities in good condition; and, except in emergencies, shall maintain in a closed position all connections under the holder's control necessary to the transmission of the Department's power and energy over the holder's transmission facilities. The parties may by mutual consent open any switch where necessary or desirable for maintenance, repair or construction.

(vi) The transmission of electric power and energy by the Department over the holder's transmission facilities will be effected in such manner as will not interfere unreasonably with the holder's use of the transmission facilities in accordance with the holder's normal operating standards, except that the Department shall have the exclusive right to utilize any increased capacity of the transmission facility which has been provided at the Department's expense.

(vii) The holder will not be obligated to allow the transmission of electric power and energy by the Department to any person receiving service from the holder on the date of the filing of the application for a grant, other than statutory preference customers including agencies of the Federal Government.

(viii) The Department will pay to the holder an equitable share of the total monthly cost of that part of the holder's transmission facilities utilized by the Department for the transmission of electric power and energy, the payment to be an amount in dollars representing the same proportion of the total monthly cost of such part of the transmission facilities as the maximum amount in kilowatts of the power transmitted on a scheduled basis by the Department over the holder's transmission facilities bears to the total capacity in kilowatts of that portion of the transmission facilities. The total monthly cost will be determined in accordance with the system of accounts prescribed by the Federal Power Commission, exclusive of any investment by the Department in the part of the transmission facilities utilized by the Department.

(ix) If, at any time subsequent to a certification by the holder or determination by the authorized officer that surplus capacity is available for utilization by the Department, the holder needs for the transmission of electric power and energy in connection with its operations the whole or any part of the capacity of the transmission facility theretofore certified or determined as being surplus to its needs, the holder may request the authorized officer to modify or revoke the previous certification or determination by making application to the authorized officer not later than 36 months in advance of the holder's needs. Any modification or revocation of the certification or determination shall not affect the right of the Department to utilize facilities provided at its expense or available under a contract entered into by reason of the equitable contract arrangements provided for in this section.

(x) If the Department and the holder disagree as to the existence or amount of surplus capacity in carrying out the terms and conditions of this paragraph, the disagreement shall be decided by a board of three persons composed as follows: The holder and the authorized officer shall each appoint a member of the board and the two members shall appoint a third member. If the members appointed by the holder and the authorized officer are unable to agree on the designation of the third member, he shall be designated by the Chief Judge of the United States Court of Appeals of the circuit in which the major share of the facilities involved is located. The board shall determine the issue and its determination, by majority vote, shall be binding on the Department and the holder.

(xi) As used in this section, the term "transmission facility" includes (*a*) all types of facilities for the transmission of electric power and energy and facilities for the interconnection of such facilities, and (*b*) the entire transmission line and associated facilities, from substation or interconnection point to substation or interconnection point, of which the segment crossing the lands of the United States forms a part.

(xii) The terms and conditions prescribed in this paragraph may be modified at any time by means of a supplemental agreement negotiated between the holder and the Secretary of the Interior or his designee.

STEWART L. UDALL,
Secretary of the Interior.

MARCH 22, 1963.

[F.R. Doc. 63-3191; Filed, Mar. 22, 1963; 10:53 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 2101]

SUBCHAPTER C—AREAS SUBJECT TO SPECIAL LAWS

PART 115—REVESTED OREGON AND CALIFORNIA RAILROAD AND RECONVEYED COOS BAY WAGON ROAD GRANT LANDS IN OREGON

SUBCHAPTER T—SALE, LEASE, OR USE, AND ACQUISITIONS

PART 259—DISPOSAL OF TIMBER AND MINERAL RESOURCES

Miscellaneous Amendments

1. Section 115.16 is amended by addition of a new paragraph (h) which defines third party scaling as follows:

§ 115.16 Definitions.

* * * * *

(h) "Third party scaling" means the measurement of logs by a scaling organization, other than a government agency, approved by the Bureau.

2. Section 115.19 is amended to read as follows:

§ 115.19 Appraisal and measurement.

(a) All timber to be sold shall be appraised and in no case shall be sold at less than the appraised value. Such timber shall be measured by tree cruise, log scale, weight, or such other form of measurement as may be determined to be in the public interest.

(b) As the general practice, the Bureau will sell timber on a tree cruise basis.

(c) Bureau scaling will be used from time to time for administrative reasons. Such reasons would include but not be limited to the following: to improve cruising standards; check accuracy of cruising practices; for volumetric analysis; and for highly defective timber where it is impossible to determine the tree cruise volume within a reasonable degree of accuracy.

(d) Third party scaling may be ordered by the Bureau after a determination that all of the following factors exist: (1) A timber disaster has occurred; (2) a critical resource loss is imminent; (3) measurement practices listed in paragraphs (b) and (c) of this section are inadequate to permit orderly disposal of the damaged timber. Third party scaling volumes must be capable of being equated to Bureau standards in use for timber depletion computations, to insure conformance with sustained yield principles.

3. Section 259.2 is amended by addition of a new paragraph (i) which defines third party scaling as follows:

§ 259.2 Definitions.

* * * * *

(i) Third party scaling means the measurement of logs by a scaling organization, other than a government agency, approved by the Bureau.

4. Section 259.6(c) is amended and new paragraphs designated (d), (e), and (f) are added as follows:

§ 259.6 Sales, appraisals, and measurements.

* * * * *

(c) Timber to be sold shall be measured by the cruise, log scale, weight, or such other form of measurement as may be determined to be in the public interest.

(d) As the general practice, the Bureau will sell timber on a tree cruise basis.

(e) Bureau scaling will be used from time to time for administrative reasons. Such reasons would include but not be limited to the following: To improve cruising standards; check accuracy of cruising practices; for volumetric analysis; and for highly defective timber where it is impossible to determine the tree cruise volume within a reasonable degree of accuracy.

(f) Third party scaling may be ordered by the Bureau after a determination that all of the following factors exist: (1) A timber disaster has occurred; (2) a critical resource loss is imminent; and (3) measurement practices listed in paragraphs (b) and (c) of this section are inadequate to permit orderly disposal of the damaged timber. Third party scaling volumes must be capable of being equated to Bureau standards in use for timber depletion computations, to insure conformance with sustained yield principles.

STEWART L. UDALL,
Secretary of the Interior.

APRIL 13, 1963.

[F.R. Doc. 63-4087; Filed, Apr. 17, 1963; 8:49 a.m.]

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Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER I—HOMESTEADS

[Circular 2102]

PART 166—ORIGINAL, ADDITIONAL, SECOND, AND ADJOINING FARM HOMESTEADS, AUTHORIZED BY THE GENERAL PROVISIONS OF THE HOMESTEAD LAWS

Cultivation

Section 166.23(a) is amended to read as follows:

§ 166.23 Cultivation required for 3-year proof.

(a) Cultivation of the land in a manner reasonably calculated to produce profitable results is required for a period of at least 2 years. This must consist of actual breaking of the soil, followed by planting, sowing of seed, tillage for a crop other than native grasses, and, in areas where rainfall is inadequate, the application of such amounts of water as may reasonably be required to produce a crop. However, tilling of the land, or other appropriate treatment, for the purpose of conserving the moisture with a view of making a profitable crop the succeeding year, will be deemed cultivation within the terms of the act (without sowing of seed) where that manner of cultivation is necessary or generally followed in the locality.

STEWART L. UDALL,
Secretary of the Interior.

APRIL 25, 1963.

[F.R. Doc. 63-4649; Filed, May 1, 1963; 8:47 a.m.]

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Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER Q—RECLAMATION AND IRRIGATION

[Circular 2103]

PART 232—DESERT LAND ENTRIES

Evidence of Water Rights

Section 232.13 is amended to read as follows:

§ 232.13 Evidence of water rights required with application.

No desert-land application will be allowed unless accompanied by evidence satisfactorily showing either that the intending entryman has already acquired by appropriation, purchase, or contract a right to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought, or that he has initiated and prosecuted, as far as then possible, appropriate steps looking to the acquisition of such a right, or, in States where no permit or right to appropriate water is granted until the land embraced within the application is classified as suitable for desert-land entry or the entry is allowed, a showing that the applicant is otherwise qualified under State law to secure such permit or right. If applicant intends to procure water from an irrigation district, corporation, or association, but is unable to obtain a contract for the water in advance of the allowance of his entry, then he must furnish, in lieu of the contract, some written assurance from the responsible officials of such district, corporation, or association that, if his entry be allowed, applicant will be able to obtain from that source the necessary water. The manager will examine the evidence submitted in such applications and either reject defective applications or require additional evidence.

STEWART L. UDALL,
Secretary of the Interior.

APRIL 25, 1963.

[F.R. Doc. 63-4650; Filed, May 1, 1963; 8:47 a.m.]

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Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER C—AREAS SUBJECT TO SPECIAL LAWS

[Circular 2104]

PART 115—REVESTED OREGON AND CALIFORNIA RAILROAD AND RECONVEYED COOS BAY WAGON ROAD GRANT LANDS IN OREGON

Permits for Rights-of-Way for Logging Roads

1. Paragraphs (a) and (b) of section 115.171 are amended to read as follows:

§ 115.171 Payment to the United States for road use.

(a) A permittee shall pay a basic fee of five dollars per year per mile or fraction thereof for the use of any existing road or of any road constructed by the permittee upon the right-of-way. If the term of the permit is for five years or less, the entire basic fee must be paid in advance of the issuance of the permit. If the term of the permit is longer than five years, the basic fee for each five-year period or for the remainder of the last period, if less than five years, must be paid in advance at five-year intervals: *Provided, however,* That in those cases where the permittee has executed under § 115.162 an agreement respecting the use of roads, rights-of-way or lands, no such basic fee shall be paid: *Provided further,* This paragraph shall not apply where payment for road use is required under paragraph (b) of this section.

(b) Where the permittee receives a right to use a road constructed or acquired by the United States, which road is under the administrative jurisdiction of the Bureau of Land Management, the permittee will be required to pay to the United States a fee to be determined by the authorized officer who may also fix the rate at which payments shall be made by the permittee during his use of the road. The authorized officer shall base his determination upon the amortization of the replacement costs for a road of the type involved, together with a reasonable interest allowance on such costs plus costs of maintenance if furnished by the United States and any extraordinary costs peculiar to the construction or acquisition of the particular road. Where such road is subject to recreational and other authorized uses, an allowance, representing a reasonable allocation for such uses, shall be deducted from the replacement costs of the road before the amortization item is computed. In arriving at the amortization item, the authorized officer shall take into account the probable period of time, past and present, during which such road may be in existence, and the volume of timber which has been moved, and the volume of timber currently merchantable which probably will be moved from all sources over such road: *Provided, however,* That this paragraph shall not apply where the permittee transports forest products purchased from the United States through the Bureau of Land Management, or where payment for such road use to another permittee is required under §§ 115.154 to 115.179: *Provided further,* That where the United States is entitled to charge a fee for the use of a road, the authorized officer may waive such fee if the permittee grants to the United States and its licensees the right to use, without charge, permittee's roads of approximately equal value as determined under the methods provided in this paragraph and paragraph (b) of § 115.166, as may be applicable.

JOHN A. CARVER, Jr.,
Acting Secretary of the Interior.

MAY 7, 1963.

[F.R. Doc. 63-5124; Filed, May 13, 1963; 8:46 a.m.]

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Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER L—MINERAL LANDS

[Circular 2105]

PART 192—OIL AND GAS LEASES

Extension

Section 192.123 is amended to read as follows:

§ 192.123 Extension of lease eliminated from cooperative or unit plan or communitization or drilling agreement and of lease in effect at termination of such plan or agreement.

Any lease eliminated from any approved or prescribed cooperative or unit plan or from any communitization or drilling agreement authorized by the act, and any lease in effect at the termination of such plan or agreement, unless relinquished, shall continue in effect for the original term of the lease, or for two years after its elimination from the plan or agreement or the termination thereof, whichever is the longer, and so long thereafter as oil or gas is produced in paying quantities.

STEWART L. UDALL,
Secretary of the Interior.

MAY 15, 1963.

[F.R. Doc. 63-5406; Filed, May 21, 1963; 8:46 a.m.]

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Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER S—RIGHTS-OF-WAY

[Circular 2106]

PART 243—RIGHTS-OF-WAY FOR RAILROADS AND STATION GROUNDS

Citation of Statutes

1. Subparagraph (7) of paragraph (a) of § 243.6 is deleted in its entirety.

2. Subparagraph (2) of paragraph (a) of § 243.6 is amended to read as follows:

§ 243.6 Articles of incorporation, etc.[1]

* * * * *

(2) A citation of the law of the State or Territory under which the company was organized, and any amendments thereof.

STEWART L. UDALL,
Secretary of the Interior.

MAY 15, 1963.

[F.R. Doc. 63-5407; Filed, May 21, 1963; 8:45 a.m.]

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Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER A—ALASKA

[Circular 2107]

PART 65—HOMESTEADS CULTIVATION REQUIREMENTS

Period of Residence and Amount of Cultivation Required

Section 65.17 is amended to revise paragraph (b) to read as shown below and to add a new paragraph (c) as follows:

§ 65.17 Period of residence and amount of cultivation required.

* * * * *

(b) There must be shown also cultivation of one-sixteenth of the area of the claim during the second year of the entry and of one-eighth during the third year and until the submission of proof, unless the requirements in this respect be reduced upon application duly filed. Cultivation, which must consist of breaking of the soil, planting or seeding, and tillage for a crop other than native grasses, must include such acts and be done in such manner as to be reasonably calculated to produce profitable results.

(c) The law provides also that the entryman must have a habitable house upon the land at the time proof is submitted.

STEWART L. UDALL,
Secretary of the Interior.

MAY 22, 1963.

[F.R. Doc. 63-5669; Filed, May 28, 1963; 8:47 a.m.]

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Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER C—AREAS SUBJECT TO SPECIAL LAWS

[Circular 2108]

PART 118—MINNESOTA DRAINAGE

Revocation

The Department of the Interior having completed the transfer of certain lands to the State of Minnesota under the Act of May 1, 1958 (72 Stat. 99, 43 U.S.C. 1029–1034), and the restoration of ceded Indian lands to tribal ownership, the regulations under 43 CFR Part 118 are no longer necessary. Therefore, pursuant to the authority under section 2478 of the Revised Statutes (43 U.S.C. 1201), Part 118 of Chapter I of Title 43 of the Code of Federal Regulations is revoked. This revocation shall become effective on the date of its publication in the FEDERAL REGISTER.

STEWART L. UDALL,
Secretary of the Interior.

MAY 22, 1963.

[F.R. Doc. 63-5670; Filed, May 28, 1963; 8:47 a.m.]

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Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER T—SALE, LEASE, OR USE, AND ACQUISITIONS

[Circular 2109]

PART 254—RECREATION AND PUBLIC PURPOSES

Coordination With National Park Service and Bureau of Outdoor Recreation

Since the subject matter involved is properly a part of the Departmental Manual, where it appears in chapter 248.1.1, the regulations in § 254.13 including footnote 1 thereto are hereby revoked, effective on the date of publication of this notice in the FEDERAL REGISTER.

STEWART L. UDALL,
Secretary of the Interior.

MAY 29, 1963.

[F.R. Doc. 63-5956; Filed, June 5, 1963; 8:46 a.m.]

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Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 2110]

PUBLIC LANDS; APPLICATIONS, PETITIONS, AND APPEALS

Miscellaneous Amendments

PART 75—SALES AND LEASES

1. Paragraph (a) of § 75.22 is amended to read as follows:

§ 75.22 Lands subject to sale; classification and use.

(a) Any public lands in Alaska not within national parks or monuments, national forests, Indian lands, or military reservations, may be sold under the act, provided such lands shall first have been classified by the authorized officer of the Bureau of Land Management as suitable for disposal for industrial, commercial, or housing use. The authorized officer may classify lands under the act either on his own motion or upon application.

2. Paragraph (a) of § 75.23 is hereby revised to read as follows:

§ 75.23 Application;[1] service fee; limitation on holdings.

(a) An application to purchase public lands under the Act of August 30, 1949, which have not been classified for disposition under the act, may be filed with the appropriate land office by any qualified individual, association of individuals, or corporations, including municipal and public corporations. Each application must be accompanied by a petition for classification on Form 4–1677.

PART 130—GENERAL REGULATIONS INVOLVING CERTIFICATES AND SCRIP

3. The heading of § 130.1 and paragraph (a) of that section are amended to read as follows:

§ 130.1 Application; fees.[1]

(a) Applications to locate scrip, warrants, certificates, soldiers' additional rights or to make lieu selections of public lands outside of Alaska must be made on Form 4–1674, properly executed, and must be accompanied by a petition for classification on Form 4–1677. However, if the lands described in the application have been already classified and opened for acquisition with scrip, no petition is required. Applications to locate soldiers' additional homestead rights in Alaska must be made on Form 4–008a, properly executed.

[1] Title 18, U.S.C. sec. 1001, makes it a crime for any person knowingly and wilfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

PART 132—SOLDIERS' ADDITIONAL HOMESTEAD RIGHTS

4. Section 132.7 is amended to read as follows:

§ 132.7 Forms prescribed for applications.

For public lands in Alaska, Form 4–008a must be used. For other public lands, Form 4–1674 must be used.

5. Paragraph (a) of § 132.8 is amended to read as follows:

§ 132.8 Action on applications.

(a) Where an application to locate soldiers' additional rights under sections 2306 and 2307, Revised Statutes (43 U.S.C. 274, 278), is held for rejection, and the applicant accepts the holding and files a substitute soldiers' additional right, such substitute right should be accompanied by the proper formal application duly executed. The substitution amounts to a waiver of all rights under the rejected application. Publication and posting must be made as required by Part 130 of this chapter, except in Alaska, where publication and posting must be made in accordance with section 10, Act of May 14, 1893 (30 Stat. 413; 48 U.S.C. 359), and § 61.13. The above covers cases in which the entire right has been held to be invalid, and has no bearing whatever on the so-called "combination" cases. Where a part of a combination of rights is held to be invalid and new rights substituted therefor, a new application should not be filed.

PART 146—EXCHANGES OF PRIVATELY OWNED LANDS UNDER TAYLOR GRAZING ACT

6. Paragraph (a) of § 146.2 is hereby revised to read as follows:

§ 146.2 Application.[1]

(a) Persons, firms, or corporations desiring to exchange lands pursuant to § 146.1 must file an application, in duplicate, on Form 4–728, together with a petition on Form 4–1677, properly executed. The documents must be filed in the land office having jurisdiction over the selected land. If the selected lands are located in a State where there is no land office, the documents must be filed with the Bureau of Land Management, Washington 25, D.C., except that if the selected lands are in North Dakota or South Dakota, they must be filed in the land office at Billings, Montana; if the selected lands are in Nebraska or Kansas, they must be filed in the land office at Cheyenne, Wyoming; and if the selected lands are in Oklahoma, they must be filed in the land office at Santa Fe, New Mexico.

§ 146.8 [Amendment]

7. Sections 146.8 (b) and (c) are revoked in their entirety and paragraph (d) is redesignated as paragraph (b).

PART 148—EXCHANGES FOR THE CONSOLIDATION OR EXTENSION OF NATIONAL FORESTS

8. Section 148.2 is hereby revised to read as follows:

§ 148.2 Applications for exchange.

All applications for exchange for the consolidation or extension of national forests must be filed with the appropriate officer of the Forest Service, U.S. Department of Agriculture. When the application involves the selection of public lands outside of national forests and under the administrative jurisdiction of the Bureau of Land Management, the applicant must also file a copy of his application, together with a petition on Form 4–1677, properly executed, in the Bureau of Land Management land office having jurisdiction over the selected lands. If the selected lands are located in a State where there is no land office, the documents must be filed with the Bureau of Land Management, Washington 25, D.C., except that if the selected lands are in North Dakota or South

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Dakota, they must be filed in the land office at Billings, Montana; if the selected lands are in Nebraska or Kansas, they must be filed in the land office at Cheyenne, Wyoming; and if the selected lands are in Oklahoma, they must be filed in the land office at Santa Fe, New Mexico.

PART 149—EXCHANGES FOR THE CONSOLIDATION OR EXTENSIONS OF INDIAN RESERVATIONS OR INDIAN HOLDINGS

9. Paragraph (a) of § 149.1 is hereby revised to read as follows:

§ 149.1 Applications.

(a) Applicants for exchange must file, in triplicate, an application on Form 4–1493, together with a petition on Form 4–1677, properly executed. The documents must be filed in the Bureau of Land Management land office having jurisdiction over the selected lands. If the selected lands are located in a State where there is no land office, the documents must be filed with the Bureau of Land Management, Washington 25, D.C., except that if the selected lands are in North Dakota or South Dakota, they must be filed in the land office at Billings, Montana; if the selected lands are in Nebraska or Kansas, they must be filed in the land office at Cheyenne, Wyoming; and if the selected lands are in Oklahoma, they must be filed in the land office at Santa Fe, New Mexico.

§ 149.8 [Revocation]

10. Section 149.8 is revoked in its entirety.

PART 166—ORIGINAL, ADDITIONAL, SECOND, AND ADJOINING FARM HOMESTEADS, AUTHORIZED BY THE GENERAL PROVISIONS OF THE HOMESTEAD LAWS

11. Section 166.17 is amended to read as follows:

§ 166.17 Petitions and applications.

(a) A person who desires to enter public lands outside of Alaska must file an application on Form 4–007, together with a petition on Form 4–1677, properly executed. However, if the lands described in the application have been already classified and opened to homestead entry under the provisions of this part, no petition (Form 4–1677) is required. The documents must be filed in the proper land office in the State, or if the lands are in a State in which there is no land office, must be filed with the Bureau of Land Management in Washington, D.C., except that petitions for lands in North Dakota or South Dakota must be filed in the land office at Billings, Montana; petitions for lands in Nebraska or Kansas must be filed in the land office at Cheyenne, Wyoming; for lands in Oklahoma in the land office at Sante Fe, New Mexico.

(b) Applications for public lands in Alaska subject to entry under the regulations of this part must be filed with the proper land office on Form 4–007, properly executed.

12. Section 166.68 is amended to read as follows:

§ 166.68 Petitions and applications.

A person who desires to make an additional homestead entry under Section 6 of the Act of March 2, 1889, must comply with the provisions of § 166.17. In addition, he must file with the prescribed form or forms a reference to the Act of March 2, 1889, and a description, by number, section, township, and range of his original entry, together with the date of the issuance of the final receipt thereon. He is not required to show that he is still the owner or occupant of the land originally entered.

13. Section 166.71 is amended to read as follows:

§ 166.71 Petitions and applications.

A person who desires to make an additional homestead entry under Section 2 of the Act of April 28, 1904, must comply with the provisions of § 166.17. In addition, he must file with the prescribed form or forms a reference to the Act of April 28, 1904, and a description by number, section, township, and range of his original entry. He must also show that he owns and resides upon the land embraced in his original entry.

PART 167—ENLARGED HOMESTEADS

14. Section 167.3 is amended to read as follows:

§ 167.3 Petitions and applications.[2]

A person who desires to enter public lands under the enlarged homestead laws must file an application on Form 4–003, together with a petition on Form 4–1677, properly executed. However, if the lands have been already classified and opened to entry under the enlarged homestead laws, only an application (Form 4–003) should be filed. The documents must be filed in the proper land office in the State, except that petitions for lands in North Dakota or South Dakota must be filed in the land office at Billings, Montana, and petitions for lands in Kansas must be filed in the land office at Cheyenne, Wyoming.

§ 167.8 [Amendment]

15. Section 167.8 is revoked in its entirety.

16. Section 167.12 is amended to read as follows:

§ 167.12 Who may make additional entry; additional information required.

The act of March 3, 1915, confers the right of entry only upon one who "still owns and occupies the land" first entered; it is not required that the claimant be residing on said tract, and the occupancy thereof may be by agent or through a tenant. It should be observed that no change has been made in the requirement of the law that the tracts be contiguous; and this would not be fulfilled by the fact that they corner on each other. Where a person desires to make an entry under the Act of March 3, 1915, he must file in addition to the form or forms required by § 167.3, a statement showing continued ownership and occupancy of the land first entered, and a statement setting forth the character of the land in both tracts. These statements together with the required forms will be considered as a petition for designation under the enlarged homestead laws.

PART 176—INDIAN ALLOTMENTS AND POSSESSIONS

17. Section 176.4 is amended to read as follows:

§ 176.4 Petitions and applications.

Any person desiring to receive an Indian allotment (other than those seeking allotments in national forests, for which see § 176.15 of this part) must file with the manager of the land office for the district in which the land is situated, an application on Form 4–012, together with a petition on Form 4–1677, properly executed, together with a certificate from the authorized officer of the Bureau of Indian Affairs that the person is Indian and entitled to allotment, as specified in § 176.2. However, if the lands described in the application have been already classified and opened for disposition under the provisions of this part, no petition (Form 4–1677) is required. The documents must be filed in the proper land office in the State, or if the lands are in a State in which there is no land office, must be filed with the Bureau of Land Management in Washington, D.C., except that petitions for lands in North Dakota or South Dakota must be filed in the land office at Billings, Montana; petitions for lands in Nebraska or Kansas must be filed in the land office at Cheyenne, Wyoming; for lands in Oklahoma in the land office at Santa Fe, New Mexico. The petition and the statement attached to the application for certificate must be signed by the applicant.[1]

18. Section 176.5 is amended to read as follows:

§ 176.5 Blank forms.

Blank forms for petitions and applications may be had from any office of the Bureau of Indian Affairs, or from land offices of the Bureau of Land Management.

19. Paragraph (a) of § 176.7 is amended to read as follows:

§ 176.7 Certificate of allotment.

(a) When the manager approves an application for allotment, he will issue to the applicant a "certificate of allotment", on a prescribed form, showing the name in full of the applicant, post office address, name of the tribe in which membership is claimed, serial number of the certificate issued by the Commissioner of Indian Affairs, and a description of the land allotted.

20. Paragraph (c) of § 176.10 is amended to read as follows:

---

[1] See footnote on page 1.

[2] Any person qualified to make an original homestead entry for 160 acres is qualified to make entry under the Enlarged Homestead Acts for 320 acres.

§ 176.10 Segregative effect of application.

* * * * *

(c) Where an allotment application is approved by the authorized officer, it operates as a segregation of the land, and subsequent applications for the same land will be rejected.

PART 221—APPEALS AND CONTESTS

21. Section 221.1 is revised to read as follows:

§ 221.1 Who may appeal.

Except as otherwise provided in Part 296 of this chapter, any party to a case who is adversely affected by a decision of an officer of the Bureau of Land Management other than the Director or person signing for the Director, shall have a right of appeal to the Director.

PART 232—DESERT-LAND ENTRIES

22. Section 232.9 is amended to read as follows:

§ 232.9 Petitions and applications.[1]

(a) A person who desires to enter public lands under the desert land laws must file an application on Form 4–274, together with a petition on Form 4–1677, properly executed. However, if the lands described in the application have been already classified and opened for disposition under the desert land laws, no petition (Form 4–1677) is required. The documents must be filed in the proper land office in the State, except that petitions for lands in North Dakota or South Dakota must be filed in the land office at Billings, Montana.

(b) All applications on Form 4–274 must be accompanied by an application service fee of $15 which is not returnable, and the payment of 25 cents per acre for the lands therein described as required by law.

§ 232.10 [Revocation]

23. Section 232.10 is revoked in its entirety.

§ 232.14 [Revocation]

24. Section 232.14 is revoked in its entirety.

PART 234—RECLAMATION OF ARID LANDS IN NEVADA

25. Section 234.4 is amended to read as follows:

§ 234.4 Petitions and applications.[1]

(a) A person who desires to apply for a permit to explore for water under the terms of this act must file an application on Form 4–1680, together with a petition on Form 4–1677, properly executed. However, if the lands described in the application have been already classified and opened for disposition under the Pittman Act, no petition (Form 4–1677) is required. The documents must be filed in the land office at Reno, Nevada.

(b) All persons filing applications must pay a nonrefundable application service fee of $75.

[1] See footnote on page 1.

PART 250—PUBLIC SALES

26. Paragraph (a) of § 250.3 is hereby revised to read as follows:

§ 250.3 Application.

(a) A person who desires to have a tract ordered into market must file an application in duplicate on Form 4–008e, together with a petition on Form 4–1677, properly executed. These documents must be filed in the proper land office in the State, or if the lands are in a State in which there is no land office, they must be filed with the Bureau of Land Management, Washington 25, D.C., except that documents relating to lands in North Dakota or South Dakota must be filed in the land office at Billings, Montana; documents relating to lands in Nebraska or Kansas must be filed in the land office at Cheyenne, Wyoming; documents relating to lands in Oklahoma in the land office at Santa Fe, New Mexico.

§ 250.13 [Revocation]

27. Section 250.13 is revoked in its entirety.

PART 254—RECREATION AND PUBLIC PURPOSES

28. Paragraph (a) of § 254.7 is hereby revised to read as follows:

§ 254.7 Applications.[1]

(a) Applicants under the act must submit an application on Form 4–1267 accompanied by a petition on Form 4–1677, properly executed. If the lands have been already classified for disposition under the act, no petition (Form 4–1677) is required. Each application must be accompanied by (1) three copies of a statement describing the proposed use of the lands, showing that the application involves an established or definitely proposed project, and giving as much detail concerning the plan of development and improvement of the project as is necessary to describe the project and its purpose adequately and the proposed disposition of any revenues to be realized from it and (2) a filing fee of $10. The documents must be filed in the proper land office in the State, or if the lands are in a State in which there is no land office, they must be filed with the Bureau of Land Management, Washington 25, D.C., except that documents relating to lands in North Dakota or South Dakota must be filed in the land office at Billings, Montana; documents relating to lands in Nebraska or Kansas must be filed in the land office at Cheyenne, Wyoming; documents relating to lands in Oklahoma in the land office at Santa Fe, New Mexico.

§ 254.15 [Revocation]

29. Section 254.15 is revoked in its entirety.

PART 257—SALE OR LEASE OF SMALL TRACTS

30. Paragraph (a) of § 257.6 is hereby revised to read as follows:

§ 257.6 Application; general procedure.

(a) Any person who desires to lease or purchase unclassified lands that have been opened to application pursuant to the regulations of this part (see subparagraph (4) of paragraph (e) of this section) must file an application, in duplicate, on Form 4–776, together with a petition on Form 4–1677, properly executed. If the lands have been already classified and opened to application, only an application on Form 4–776 is required. If the lands have been already classified for direct sale at public auction no application (Form 4–776) or petition (Form 4–1677) should be filed (see paragraph (c) of this section). The documents must be filed in the proper land office in the State, or if the lands are in a State in which there is no land office, they must be filed with the Bureau of Land Management, Washington 25, D.C., except that documents relating to lands in North Dakota or South Dakota must be filed in the land office at Billings, Montana; documents relating to lands in Nebraska or Kansas must be filed in the land office at Cheyenne, Wyoming; and documents relating to lands in Oklahoma in the land office at Santa Fe, New Mexico.

§ 257.20 [Revocation]

31. Section 257.20 is revoked in its entirety.

PART 270—STATE GRANTS FOR EDUCATIONAL, INSTITUTIONAL, AND PARK PURPOSES

32. Paragraphs (a) and (c) of § 270.3 are amended to read as follows:

§ 270.3 Applications for selection.

(a) Applications for selection must be made on Form 4–1681, and must be accompanied by a petition on Form 4–1677, properly executed. However, if the lands described in the application have been already classified and opened for selection pursuant to the regulations of this part, no petition (Form 4–1677) is required.

* * * * *

(c) Applications must be accompanied by the following information:

(1) A reference to the act of August 27, 1958 (72 Stat. 928), as amended.

(2) A certificate by the selecting agent showing.

(i) All facts relative to medicinal or hot springs or other waters upon the selected lands.[2]

(ii) That indemnity has not been previously granted for the assigned base lands and that no other selection is pending for such assigned base.

(3) A statement describing the mineral or nonmineral character of each smallest legal subdivision of the base and selected lands or mineral estate.

(4) A certificate by the officer or officers charged with the care and disposal

[2] This provision does not apply insofar as the application involves the selection of the mineral estate.

of school lands that no instrument purporting to convey, or in any way incumber, the title to any of the land used as base or bases, has been issued by the State or its agents.

§ 270.6 [Revocation]

33. Section 270.6 is revoked in its entirety.

34. Paragraph (b) of § 270.9 is amended to read as follows:

§ 270.9 Applicable regulations.

* * * * *

(b) Section 270.3(c)(1) is modified to require reference to the appropriate granting act; § 270.3(c)(3) is modified to require a statement testifying to the nonmineral character of each smallest legal subdivision of the selected land; § 270.3(d)(2) is modified to permit as much as 6,400 acres in a single selection; and § 270.3(c)(2)(ii) is modified to require a certificate that the selection and those pending, together with those approved, do not exceed the total amount granted for the stated purpose of the grant.

Part 296 is revised in its entirety to read as follows:

PART 296—LAND CLASSIFICATIONS

Sec.
296.1 Statutory authority.
296.2 Criteria for classification of land.
296.3 Officers who may exercise classification authority.
296.4 Procedures for classification.
296.5 Administrative review.
296.6 Preference right of petitioner-applicants.
296.7 Procedures for allowance and entry.

AUTHORITY: §§ 296.1 to 296.7 issued under sec. 2478, Revised Statutes, 43 U.S.C. 1201, as amended; sec. 7, 8(b), Act of June 28, 1934, 48 Stat. 1272; 43 U.S.C. 315 f and g, as amended; sec. 2455, Revised Statutes, 48 Stat. 1274; 43 U.S.C. 1171, as amended; Act of June 1, 1938, 53 Stat. 609, 43 U.S.C. 682 a–e, as amended; Act of June 14, 1926, 44 Stat. 741, 43 U.S.C. 869, 869: 1–4, as amended; Act of August 30, 1949, 68 Stat. 679, 48 U.S.C. 364 a–e.

§ 296.1 Statutory authority.

(a)(1) All vacant public lands, except those in Alaska, have been, with certain exceptions, withdrawn from entry, selection, and location under the nonmineral land laws by Executive Order 6910, of November 26, 1934, and Executive Order 6964 of February 5, 1935, and amendments thereto, and by the establishment of grazing districts under section 1 of the Act of June 28, 1934 (48 Stat. 1292; 43 U.S.C. 315a). Section 7 of the Act of June 28, 1934 (48 Stat. 1272; 43 U.S.C. 315f), as amended, authorizes the Secretary of the Interior in his discretion to examine and classify and open to entry, selection, or location under applicable law any lands withdrawn or reserved by Executive Order 6910 of November 26, 1934, or Executive Order 6964 of February 5, 1935, and amendments thereto, or within a grazing district established under that act; which he finds are more valuable or suitable for the production of agricultural crops than for the production of native grasses and forage plants, or more valuable or suitable for any other use than for the use provided for under said act, or proper for acquisition in satisfaction of any outstanding lieu, exchange, or scrip rights or land grant.

(2) Classification under section 7 is a prerequisite to the approval of all entries, selections, or locations under the following parts of this chapter, except as they apply to Alaska and with certain other exceptions: Original, Additional, Second, and Adjoining Farm Homesteads—Part 166; Enlarged Homesteads—Part 167; Indian Allotments—Part 176; Desert Land Entries—Part 232; Reclamation of Arid Lands in Nevada (Pittman Act)—Part 234; Recreation and Public Purposes Act—Part 254; State Grants for Educational, Institutional, and Park Purposes—Part 270; Scrip Selections—Parts 130, 132, and 133, and Exchanges for the Consolidation or Extension of National Forests, Indian Reservations or Indian Holdings—Parts 148 and 149.

(b) Section 8(b) of the Act of June 28, 1934 (48 Stat. 1272; 43 U.S.C. 315g), as amended, authorizes the Secretary of the Interior, when public interests will be benefited thereby, to accept on behalf of the United States title to any privately owned lands within or without the boundaries of a grazing district established under that act and in exchange therefor to issue patent for not to exceed an equal value of surveyed grazing district land or of unreserved surveyed public land in the same State or within a distance of not more than fifty miles within the adjoining State nearest the base lands. The regulations governing such exchanges are contained in Part 146 of this chapter.

(c) Section 14 of the Act of June 28, 1934 (48 Stat. 1274; 43 U.S.C. 1171), as amended, authorizes the Secretary of the Interior in his discretion to order into market and sell at public auction isolated or disconnected tracts of public land not exceeding 1,520 acres, and tracts not exceeding 760 acres the greater part of which are mountainous or too rough for cultivation. The regulations governing such sales are contained in Part 250 of this chapter.

(d) The Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682 a–e), as amended, authorizes the Secretary of the Interior in his discretion to classify certain classes of public lands for lease or sale. The regulations governing leases and sales under this act are contained in Part 257 of this chapter.

(e) The Recreation and Public Purposes Act of June 14, 1926 (44 Stat. 741; 43 U.S.C. 869, 869 1–4), as amended, requires the Secretary of the Interior, in the exercise of his discretion to make a determination that land is to be used for an established or definitely proposed project, and in the case of Alaska authorizes him to classify certain classes of public lands for lease or sale for recreation or other public purposes. The regulations governing lease and sale of land under this act are contained in Part 254 of this chapter.

(f) The Alaska Public Sales Act of August 30, 1949 (63 Stat. 679; 48 U.S.C. 364 a–e), authorizes the Secretary of the Interior in his discretion to classify certain classes of public lands in Alaska for public sale for industrial or commercial purposes. The regulations governing sales of land under this act are contained in Part 75 of this chapter.

§ 296.2 Criteria for classification of land.

(a) *Policy.* The statutes cited in § 296.1 authorize the Secretary of the Interior, in his discretion, to classify land or otherwise to take appropriate steps looking to its disposition, subject to requirements of the applicable statutes. It is the policy of the Secretary to specify those criteria which will be considered in the exercise of his discretion.

(b) *General criteria.* Factors to be considered in any classification action or other determinations authorized by statutes cited in § 296.1 are as follows:

(1) The capability, suitability, availability and physical characteristics of the lands for the purposes for which they are sought or for any other purposes for which the public land laws were enacted.

(2) Potential demand for the land for public purposes which may require its retention in Federal ownership.

(3) Results of change of land use in terms of benefit or detriment to present or future Federal, State, or local interests. In applying this criterion, comments and views of officials of the Federal agencies, States, counties, municipalities, and other public agencies affected, and private citizens, will be sought and considered where practicable.

(4) Consideration will be given to whether land is subject to mineral permits or leases issued or applied for, or

is classified, withdrawn, or reported as valuable for any leasable mineral or lies within the known geologic structure of a producing oil or gas field.

(c) *Additional criteria applicable to agricultural entry.* (1) In the determination whether land will be classified and opened to entry under the regulations of Parts 166, 167, 232, and 234 of this chapter there will be taken into consideration the physical and economic suitability of the land for cultivation, including such factors as soil and water characteristics, topography, climate, location, and accessibility. Consideration may be given to Federal policies affecting the agricultural economy.

(2) When it is determined that the cultivation of land otherwise suitable for agricultural entry under regulations of Parts 166, 167, 232, or 234 of this chapter would endanger the supply of adequate water for existing users or cause the dissipation of water reserves, such land will not be classified and opened to agricultural entry under section 7 of the Taylor Grazing Act.

(3) Land will be classified for entry under the agricultural land laws (Parts 166, 167, 232, or 234 of this chapter) only if there is available to the land sufficient water to permit agricultural devolpment of its cultivable portions. Views of States or their agencies having authority in determining the beneficial use of water shall be considered.

(d) *Private exchange criteria.* In the determination whether an offer to exchange lands of equal value under authority of section 8(b) of the Act of June 28, 1934 (48 Stat. 1272; 43 U.S.C. 315g), as amended, meets the statutory requirement that the public interest shall be benefited thereby the following factors will be taken into consideration:

(1) The effect upon Federal programs of acquisition of the offered land.

(2) The effect upon Federal programs of disposition of selected lands.

(3) The anticipated cost to the Federal Government of appraisals to determine equality of values, and the disruption of other programs which this may occasion.

§ 296.3 Officers who may exercise classification authority.

(a) The authority of the Secretary of the Interior to classify lands and make other determinations in accordance with the regulations of this part has been delegated to persons authorized to act in his name; to the Director of the Bureau of Land Management and persons authorized to act in his name; to State Directors of the Bureau of Land Management and to any person authorized to act in the name of a State Director.

(b) Classification and other determinations in accordance with the regulations of this part may be made by the authorized officer without applications or petitions having been filed for the lands.

§ 296.4 Procedures for classification.

(a) When land must be classified or designated pursuant to the authorities cited in § 296.1 before an application for entry may be approved, the application together with a Petition for Classification on Form 4–1677 (hereinafter referred to collectively as a "petition-application") will be filed in the appropriate land office in the State in which the lands are located. For lands in North Dakota or South Dakota filings shall be made in the land office at Billings, Montana; in Nebraska or Kansas, filings shall be made in the land office at Cheyenne, Wyoming; in Oklahoma, filings shall be made in the land office at Santa Fe, New Mexico. For lands in all other States, filings shall be made with the Bureau of Land Management, Washington 25, D.C. Lists indicating the proper office for filing of application may be obtained from the Director or any other officer of the Bureau of Land Management. Copies of Form 4–1677 and the application forms may be obtained from the land offices or from the Bureau of Land Management, Washington 25, D.C.

(b) Upon the filing of a petition-application, the authorized officer shall make a preliminary determination as to whether it is regular upon its face and, where there is no apparent defect, shall proceed to examine and classify the land for which it has been filed. No further consideration will be given to the merits of an application or the qualifications of an applicant unless or until the land has been classified for the purpose for which the petition-application has been filed.

(c) The State Director shall make and issue a proposed classification decision which shall contain a statement of reasons in support thereof. The proposed decision shall be served upon each petitioner-applicant for the land and upon any grazing permittee, licensee, or lessee on the land. If the record discloses that comments on the classification have been received from officials or agencies referred to in subsections of 296.2(b)(3) or 296.2(c)(3), an information copy of the proposed classification decision shall be mailed to such persons or agencies.

(d) When there are multiple petition-applications for the same land, the proposed decision shall state which petition-application if any will be entitled to preference under applicable law; or, where no petition-application has been filed for the purpose for which the land is proposed to be classified, the proposed decision shall so state.

(1) When multiple petition-applications have been filed for the same land, the one first filed for the purpose for which it is proposed to classify the land will be entitled to preference under applicable law.

(2) When two or more petition-applications have been simultaneously filed for the purpose for which it is proposed to classify the land, the petition-application entitled to preference will be the first to be selected by drawing.

(3) If no petition-application has been filed for the purpose for which it is proposed to classify the land, the proposed decision shall state that the land will be opened to entry after public notice in accordance with applicable regulations for the purpose for which it may be classified.

(e) For a period of thirty days after the proposed decision on land classification has been served upon the petitioner-applicants and grazing permittees, licensees, or leasees, protest as to the proposed classification may be filed by any interested party with the State Director. No particular form of protest is required under this subparagraph, it being the intent of this procedure to afford the State Director the opportunity to review the proposed decision in the light of such protests.

(1) If no protests are filed within the time allowed, the proposed classification action shall be issued as the initial decision of the State Director, and shall be served on the petitioner-applicants and upon grazing permittees, licensees, or leasees.

(2) If protests are timely filed, they shall be reviewed by the State Director, who may require statements or affidavits, take testimony, or conduct further field investigations as are deemed necessary to establish the facts. At the conclusion of such review, the State Director shall issue an initial decision, either revised or as originally proposed, which shall be served on all interested parties.

(f) The filing of a petition-application gives no right to occupy or settle upon the land. A person shall be entitled to the possession and use of land only after his entry, selection or location has been allowed, or a lease has been issued. Settlement on the land prior to that time constitutes a trespass.

§ 296.5 Administrative review.

(a) For a period of sixty days after service thereof upon all parties in interest, the initial decision of the State Director shall be subject to the exercise of supervisory authority by the Secretary of the Interior for the purpose of administrative review.

(b) If, sixty days from receipt by parties in interest of the initial decision of the State Director, the Secretary has not either on his own motion, on motion of any protestant, petitioner-applicant, or the State Director, exercised supervisory authority for review, the initial decision shall become the final order of the Secretary, reviewable in the courts as otherwise provided by law.

(c) If supervisory authority of the Secretary is exercised, the initial decision of the State Director shall be deemed vacated, and the final Departmental decision shall be issued by the Secretary of the Interior and served upon all parties in interest.

(d) No petitioner-applicant or protestant to a proposed decision of a State Director to whom the provisions of this section are applicable shall be entitled to any administrative review other than that provided by this section nor to appeal under provisions of Part 221 of this chapter.

§ 296.6 Preference right of petitioner-applicants.

Where public land is classified for entry under section 7 of the Taylor Grazing Act or under the Small Tract Act pursuant to a petition-application filed under this part, the petitioner-applicant is entitled to a preference right of entry, if qualified. If, however, it should be necessary thereafter for any reason to reject the application of the preference right claimant, the next petitioner-applicant in order of filing shall succeed to the preference right. If there is no other petitioner-applicant the land may be opened to application for the purpose for which it is classified or the classification may be revoked by the authorized officer.

§ 296.7 Procedures for allowance and entry.

After lands are classified and opened for entry pursuant to the regulations of this part, all the laws and regulations governing the particular kind of entry, location, selection, or other dispositions must be complied with in order for title to vest or other interests to pass.

STEWART L. UDALL,
Secretary of the Interior.

JUNE 7, 1963.

[F.R. Doc. 63-6242; 63-6243; Filed, June 13, 1963; 8:46 a.m.]

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Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 2111]

SUBCHAPTER C—AREAS SUBJECT TO SPECIAL LAWS

PART 115—REVESTED OREGON AND CALIFORNIA RAILROAD AND RECONVEYED COOS BAY WAGON ROAD GRANT LANDS IN OREGON

SUBCHAPTER T—SALE, LEASE, OR USE, AND ACQUISITION

PART 259—DISPOSAL OF TIMBER AND MINERAL RESOURCES

SUBCHAPTER W—TIMBER LANDS

PART 284—TIMBER CUTTING, SALE, OR USE

PART 285—DISPOSAL OF TIMBER AND VEGETATIVE RESOURCES

Miscellaneous Amendments

§§ 115.15–115.32 [Revocation]

1. Sections 115.15 to 115.32 together with center heading are revoked.

§§ 259.3–259.19 [Revocation]

2. Sections 259.3 to 259.19 together with center heading "Sales" are revoked.

§§ 284.1–284.19 [Revocation]

3. Sections 284.1 to 284.19 are revoked.

4. Sections 285.1 to 285.18 are established as follows:

Sec.
285.1 Statutory authority.
285.2 Definitions.
285.3 Annual timber sale plan.
285.4 Advertising.
285.5 Appraisal and measurement.
285.6 Competitive sales.
285.7 Negotiated sales.
285.8 Qualification of bidders and purchasers.
285.9 Deposits with bids.
285.10 Conduct of sales.
285.11 Award of contract.
285.12 Contract forms.
285.13 Performance bonds.
285.14 Payments.
285.15 Time for cutting and removal.
285.16 Extension of time.
285.17 Reappraisal.
285.18 Assignments.

AUTHORITY: §§ 285.1 to 285.18 issued under sec. 5, 50 Stat. 875; 43 U.S.C. 1181e; 61 Stat. 681, as amended; 69 Stat. 367; 30 U.S.C. 601 et seq.

§ 285.1 Statutory authority.

(a) The act of August 28, 1937 (50 Stat. 874, 43 U.S.C. 1181a) authorizes the sale of timber from the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands and directs that such lands shall be managed for permanent forest production and the timber thereon sold, cut and removed in conformity with the principle of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating streamflow and contributing to the economic stability of local communities and industries and providing recreational facilities.

(b) The act of July 31, 1947 (61 Stat. 681), as amended by the acts of July 23, 1955 (69 Stat. 367, 30 U.S.C. 601 et seq.) and the act of September 25, 1962 (76 Stat. 587) authorizes the disposal of timber and other vegetative resources on public lands of the United States including lands embraced within an unpatented mining claim located after July 23, 1955, if the disposal of such resources is not otherwise expressly authorized by law including, but not limited to, the act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315–315 o–1), as amended, and the United States mining laws; is not expressly prohibited by laws of the United States; and would not be detrimental to the public interest.

(1) The act also authorizes the United States, its permittees, and licensees to use so much of the surface of any unpatented mining claim located under the mining law of the United States after July 23, 1955, as may be necessary for access to adjacent land for the purposes of such permittees or licensees. Any authorized use of the surface of any such mining claim shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto.

(2) Where the lands have been withdrawn in aid of a function of a Federal department or agency other than the Department of the Interior, or of a State, county, municipality, water district or other local governmental subdivision or agency, the Secretary of the Interior may make disposals under the regulations in this part only with the consent of such other Federal department or agency or of such state, or local governmental unit. The act of July 23, 1955, supra, provides, however, that the Secretary of Agriculture shall dispose of materials under the act of July 31, 1947, as amended, supra, if such materials are on lands administered by the Secretary of Agriculture for national forest purposes or for purposes of Title III of the Bankhead-Jones Farm Tenant Act or where withdrawn for the purpose of any other function of the Department of Agriculture.

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Circular Distribution List

(3) The provisions of the act of July 23, 1955, supra, in disposal of vegetative or mineral materials do not apply to lands in any national park, or national monument or to any Indian lands or lands set aside or held for the use or benefit of Indians including lands over which jurisdiction has been transferred to the Department of the Interior by Executive order for the use of Indians.

(c) The sale of timber in Alaska will be made under pertinent statutes and the applicable regulations (Part 79 of this chapter); however, sales of more than a two-year supply of timber for domestic use in Alaska may be authorized under the act of July 31, 1947 (61 Stat. 631), as amended.

§ 285.2 Definitions.

Except as the context may otherwise indicate, as the terms are used in §§ 285.1 to 285.18 and in contracts issued thereunder:

(a) "Bureau" means of Land Management, Department of the Interior.

(b) "Director" means the Director of the Bureau of Land Management.

(c) "Authorized Officer" means an employee of the Bureau of Land Management, to whom has been delegated the authority to take action.

(d) "O and C Lands" means the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Land Grant Lands and other lands administered by the Bureau of Land Management under the provisions of the act of August 28, 1937 (50 Stat. 874).

(e) "Public Lands" means the public domain and its surface resources under the jurisdiction of the Bureau of Land Management, and lands from which the vegetative resources may be sold in accordance with the provisions of § 285.1 (b) (2).

(f) "Timber" means standing trees, downed trees, logs or forest products of any type which are capable of being measured in board feet.

(g) "Other vegetative resources" means all vegetative material which cannot be measured in units of board feet of timber.

(h) "Set-aside" means a designation of timber for sale which is limited to bidding by small business concerns as defined by the Small Business Administration in its regulations (13 CFR Part 121) under the authority of section 15 of the Small Business Act of July 18, 1958 (72 Stat. 384).

(i) "Logging unit" means a portion of the cutting area under contract clearly designated or marked by the authorized officer for the purpose of administering optional bonding and payment provisions of the timber sale contract. The total cutting area under contract may not be divided into less than two logging units.

(j) "Third party scaling" means the measurement of logs by a scaling organization, other than a government agency, approved by the Bureau.

§ 285.3 Annual timber sale plan.

Plans for the sale of timber from the O. and C. and public lands will be developed annually. Suggestions from prospective purchasers of such timber may be received to assist in the development of a sound annual timber sale plan. Such plan may be advertised in a newspaper of general circulation in the area in which the timber is located. Such advertisement shall indicate generally the probable time when the various tracts of timber included in the plan will be offered for sale, set-asides if any, and the probable location and anticipated volumes of such tracts. The authorized officer may subsequently change, alter or amend the annual timber sale plan.

§ 285.4 Advertising.

(a) Competitive timber sales shall be advertised in a newspaper of general circulation in the area in which the timber is located and a notice of the sale shall be posted in a conspicuous place in the office where bids are to be submitted. Such advertisement shall be published on the same day once a week for two consecutive weeks, except that sales amounting to less than 500 M board feet, need be published once only. When in the discretion of the authorized officer longer advertising periods are desired, such longer periods are permitted.

(b) The advertisement of sale shall state the location by legal description of the tract or tracts on which timber is being offered, the species, estimated quantities, the unit of measurement, appraised values, time and place for receiving and opening of bids, minimum deposit required, the access situation, the method of bidding, which tracts of timber if any have been designated as set-asides, the office where additional information may be obtained, and such additional information as the authorized officer may deem necessary.

§ 285.5 Appraisal and measurement.

(a) All timber to be sold shall be appraised and in no case shall be sold at less than the appraised value. Such timber shall be measured by tree cruise, log scale, weight, or such other form of measurement as may be determined to be in the public interest.

(b) As the general practice, the Bureau will sell timber on a tree cruise basis.

(c) Scaling by the Bureau will be used from time to time for administrative reasons. Such reasons would include but not be limited to the following: To improve cruising standards; check accuracy of cruising practices; for volumetric analysis; and for highly defective timber where it is impossible to determine the tree cruise volume within a reasonable degree of accuracy.

(d) Third party scaling may be ordered by the Bureau after a determination that all of the following factors exist: (1) A timber disaster has occurred, (2) a critical resource loss is imminent; (3) measurement practices listed in paragraphs (b) and (c) of this section are inadequate to permit orderly disposal of the damaged timber. Third party scaling volumes must be capable of being equated to Bureau standards in use for timber depletion computations, to insure conformance with sustained yield principles.

§ 285.6 Competitive sales.

All sales other than those specified in § 285.7 shall be made only after inviting competitive bids through publication and posting. Sales shall not be held sooner than one week after the last advertisement. No competitive sales shall be offered by the authorized officer unless there is access to the sale area which is available to anyone who is qualified to bid.

§ 285.7 Negotiated sales.

(a) When it is determined by the authorized officer to be in the public interest, he may sell at not less than the appraised value, without advertising or calling for bids, timber where the contract is for the sale of less than 250 M board feet.

(b) Timber on the right-of-way of a logging road and danger trees adjacent to the right-of-way on O&C lands may be sold at not less than the appraised value without advertising or calling for bids to (1) permittee who constructs a road pursuant to a permit issued under §§ 115.154 through 115.179 of this chapter, or (2) a contractor who is constructing a road with Government funds.

(c) In addition to paragraph (b) of this section, negotiated sales with no limitation as to volume may be made if:

(1) The contract is for the disposal of materials to be used in connection with a public works improvement program on behalf of a federal, state or local governmental agency and the public exigency will not permit the delay incident to advertising; or if

(2) The contract is for the disposal of property for which it is impracticable to obtain competition.

(d) A report will be made to Congress on January 1 and July 1 of each year of the contracts from public lands made under paragraph (c) (1) and (2) of this section during the period since the date of the last report. This report shall include name of purchaser; the appraisal value of the material involved; the amount of each contract; and description of the circumstances leading to the determination that the contract should be entered into by negotiation instead of competitive bidding after formal advertising.

§ 285.8 Qualification of bidders and purchasers.

(a) A bidder or purchaser for the sale of timber must be (1) an individual who is a citizen of the United States, (2) a partnership composed wholly of such

citizens, (3) an unincorporated association composed wholly of such citizens, or (4) a corporation authorized to transact business in the states in which the timber is located. A bidder must also have submitted a deposit in advance, as required by § 285.9. To qualify for bidding to purchase set-aside timber, the bidder must accompany his deposit with a self-certification statement that he is qualified as a small business concern as defined by the Small Business Administration (13 CFR Part 121).

(b) Where a timber sale notice provides that the successful bidder may use a Small Business Administration road construction loan, and the bidder has reason to believe that he qualifies for such road construction loan under SBA regulations (13 CFR Part 121), the bidder shall submit with his deposit a statement of his intention to file with SBA for such SBA road construction loan. If a statement is not timely filed, the Bureau may not participate in the cooperative loan program.

§ 285.9 Deposits with bids.

Sealed bids must be accompanied by a deposit of not less than 10 percent of the appraised value of the timber. For timber offered at oral auction, bidders must make a deposit of not less than 10 percent of the appraised value prior to the opening of the bidding. The authorized officer may, in his discretion, require larger deposits. Deposits may be in the form of cash, money orders, bank drafts, cashiers' or certified checks made payable to the Bureau of Land Management, or bid bonds of a corporate surety shown on the approved list of the United States Treasury Department. Upon conclusion of the bidding, the bid deposits of all bidders, except the high bidders, shall be returned. Except for corporate surety bid bonds, the deposit of the successful bidder will be applied on the purchase price at the time the contract is signed by the authorized officer.

§ 285.10 Conduct of sales.

(a) Bidding at competitive sales shall be conducted by the submission of written sealed bids, oral bids, or a combination of both as directed by the authorized officer. In the event of a tie in high sealed bids, the highest bidder shall be determined by oral auction among the high bidders. If no oral bid is made which is higher than the sealed bids, the highest bidder shall then be determined by lot. In oral auction sales the high bidder must confirm his bid in writing immediately upon being declared the high bidder. Except for the first bid, no oral bid will be considered or recorded which is not higher than the highest preceding bid.

(b) At the request of the authorized officer, or the officer conducting the sale, bidders must furnish evidence of qualification in conformance with § 285.8 or if such evidence has already been furnished, make appropriate reference to the record containing it.

(c) Only bids of small business concerns which have filed a self-certification statement as required by § 285.8, may be considered for sales subject to set-asides. When no such bids are received, the timber may be sold under paragraph (e) of this section in the same manner as timber not previously made subject to a set-aside. When timber subject to a set-aside is not sold for any other reason, the sale may be rescheduled for a set-aside sale.

(d) When it is in the interest of the Government to do so the authorized officer may reject any or all bids and may waive minor deficiencies in the bids or the timber sale advertisement.

(e) If no bid is received within the time specified in the advertisement of sale, and if the authorized officer determines that there has been no significant rise in the market value of the timber, he may in his discretion, keep the sale open for not to exceed 90 days by posting notice thereof in a conspicuous place in the office where bids are to be submitted. If during such period a written bid is submitted, together with the required deposit, for not less than the advertised appraised value, a notice of such bid shall be posted immediately after receipt of such bid for seven successive days in the same office and in the same manner. If no other written bid is received during the 7-day posting period, the sole bidder shall be deemed the high bidder. If, however, during such seven day posting period other written bids are received, an oral auction shall be conducted in the usual manner for those who have submitted written bids. The authorized officer shall notify those who have submitted written bids of the time and place of the oral auction. The written bids shall be considered the initial bids in such oral auction. If there is a tie in the high written bids that are submitted during the seven day posting period and if no higher bid is offered during the oral auction, the party who first submitted the high bid shall be deemed the high bidder.

§ 285.11 Award of contract.

(a) The authorized officer may require the high bidder to furnish such information as is necessary to determine the ability of the bidder to perform the obligations of the contract. The contract shall be awarded to the high bidder, unless he is not qualified or responsible, or unless all bids are rejected. If the high bidder is not qualified or responsible or fails to sign and return the contract together with the required performance bond; the contract may be offered and awarded for the amount of the high bid to the highest of the bidders who is qualified, responsible, and willing to accept the contract.

(b) Within 30 days after receipt of the contract the successful bidder shall sign and return the contract, together with any required performance bond: *Provided*, That the authorized officer may, in his discretion, extend such period an additional 30 days if the extension is applied for in writing and granted in writing within the first 30-day period. If the successful bidder fails to comply within the stipulated time, his bid deposit shall be retained as liquidated damages.

§ 285.12 Contract forms.

All sales shall be made on contract forms approved by the Director. The authorized officer may include additional provisions in the contract to cover conditions peculiar to the sale area, such as road construction, logging methods, silvicultural practices, reforestation, snag felling, slash disposal, fire prevention, fire control, and protection of improvements, watersheds and recreational values. Such additional provisions shall be made available for inspection by prospective bidders during the advertising period.

§ 285.13 Performance bonds.

(a) A minimum performance bond of not less than 20 percent of the total contract price will be required for all contracts of $2,500 or more. A minimum performance bond of not less than $500 will be required for all installment contracts less than $2,500. For cash sales less than $2,500, bond requirements, if any, will be in the discretion of the authorized officer. The performance bond may be:

(1) Bond of a corporate surety shown on the approved list issued by the United States Treasury Department and executed on an approved standard form; or

(2) Personal surety bond, executed on an approved standard form if the authorized officer determines the principals and bondsmen are capable of carrying out the terms of the contract; or

(3) Cash bond; or

(4) Negotiable securities of the United States.

(b) The authorized officer may allow the cutting of timber before payment of the second and subsequent installments as provided in this paragraph. The authorized officer shall designate logging units within the cutting area under contract and assign to them values solely for the purpose of increasing the amount of the performance bond and for payment. The purchaser shall increase the minimum performance bond required by paragraph (a) of this section by an amount equal to the value of the timber

on each logging unit and shall obtain written approval of the authorized officer for the adjusted bond prior to cutting any timber on such unit. Cutting authorized in advance of payment shall be limited to one logging unit and the increased amount of the bond shall be used to assure payment for the timber on that unit. Upon payment for the timber on such unit, the increased amount may then be applied to another logging unit subject to any adjustment in the amount of the performance bond to cover the value of timber on such logging unit.

(c) As contract provisions are completed to the satisfaction of the authorized officer, he may, in his discretion, reduce the amount of the performance bond required: *Provided, however,* The amount of the performance bond shall not be reduced below the minimum required by paragraph (a) of this section until payment for the timber sold is complete.

§ 285.14 Payments.

(a) Except as provided in § 285.13(b) no part of any timber sold may be cut or removed unless advance payment has been made as provided in the contract.

(b) For sales under $500 the full amount shall be paid prior to or at the time the authorized officer signs the contract. For sales of $500 or more the authorized officer may allow payment by installments as provided in the following paragraph (c) of this section.

(c) Contract installment payments shall be determined by the authorized officer as follows:

(1) Payment in advance of cutting. For sales under $100,000 installment payments shall be not less than 10 percent of the total purchase price. For sales of $100,000 or more installment payments shall not be less than $10,000. The first installment shall be paid prior to, or at the time the authorized officer signs the contract. The second installment shall be paid prior to the cutting or removal of the timber sold. Each subsequent installment shall be due and payable without notice when the value of the timber cut or removed equals the sum of all the payments minus the first installment.

(2) Payment in advance of removal. The first installment shall be paid in the same manner as provided in subparagraph (1) of this paragraph. If cutting of timber before payment of the second and subsequent installments, as provided by § 285.13(b) is permitted, the amounts of the second and subsequent installment payments shall be based on the authorized officer's determination of the value of the timber located upon the logging units. Payment shall be made for the value of the timber on each logging unit in advance of removal of any timber from such unit.

(d) The total amount of the contract purchase price must be paid prior to expiration of the original time for cutting and removal under the contract. For a cruise sale the purchaser shall not be entitled to a refund even though the amount of timber cut, removed, or designated for cutting may be less than the estimated total volume shown in the contract. For a scale sale, if it is determined after all designated timber has been cut and measured that the total payments made under the contract exceed the total value of the timber measured, such excess shall be refunded to the purchaser within 60 days after such determination is made.

§ 285.15 Time for cutting and removal.

Time for cutting and removal of timber sold shall not exceed a period of thirty months except that such time for cutting and removal may be extended as provided in § 285.16.

§ 285.16 Extension of time.

If the purchaser shows that his delay in cutting or removal was due to causes beyond his control and without his fault or negligence, the authorized officer may grant an extension of time, not to exceed one year, upon written request of the purchaser. Such written request must be received not later than thirty (30) days prior to the expiration date of the time for cutting and removal but not earlier than ninety (90) days prior thereto. Additional extensions may be granted if the purchaser submits a written request not later than thirty (30) days prior to the expiration date of an extension but not earlier than ninety (90) days prior thereto. No extension may be granted without reappraisal as provided in § 285.17.

§ 285.17 Reappraisal.

(a) If an extension is granted as provided in § 285.16 the timber sold shall be reappraised by the authorized officer. In making the reappraisal, the authorized officer shall use the Bureau of Land Management's prescribed procedures.

(b) For a cruise sale the timber sold remaining on the contract area shall be reappraised for the purpose of computing the reappraised total purchase price. The reappraised total purchase price shall not be less than the total purchase price established by the contract or previous extension. The reappraised total purchase price shall be paid in advance as a condition of granting an extension.

(c) For a scale sale each species of timber remaining on the contract area shall be reappraised. The reappraised unit price for each species shall be effective for the remaining life of the contract: *Provided, however,* The reappraised unit price for each species shall not be less than the unit price established by the contract or previous extension.

§ 285.18 Assignments.

(a) The purchaser may not assign the contract or any interest therein without the written approval of the authorized officer. An assignment shall contain all the terms and conditions agreed upon by the parties thereto.

(b) The authorized officer will not approve any proposed assignment involving contract performance unless the assignee (1) is authorized to transact business in the State in which the timber is located; (2) submits such information as is necessary to assure the authorized officer of his ability to fulfill the contract; and (3) furnishes a performance bond as required by § 285.13 or obtains a commitment from the previous surety to be bound by the assignment when approved. Upon approval of an assignment by the authorized officer, the assignee shall be entitled to all the rights and subject to all the obligations under the contract, and the assignor shall be released from any further liability under the contract.

STEWART L. UDALL,
Secretary of the Interior.

JUNE 18, 1963.

[F.R. Doc. 63-6628; Filed, June 21, 1963; 8:52 a.m.]

This Circular replaces Circulars 1835, 1996, 2021, 2087, and those portions of Circulars 2086 and 2101 relating to 43 CFR Part 115.

31027

GPO 840-842

Repl. by C-2139

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER L—MINERAL LANDS

[Circular 2112]

PART 192—OIL AND GAS LEASES

Bonds

Paragraph (b) of § 192.100 is amended to read as follows:

§ 192.100 Amount of bonds required of lessee.

* * * * *

(b) Until a general lease bond is filed, a noncompetitive lessee will be required prior to entry on the leased lands to furnish and maintain a bond in the penal sum of not less than $1,000 in those cases in which a bond is required by law for the protection of the owners of surface rights.

(30 U.S.C. 189, 43 U.S.C. 1201)

STEWART L. UDALL,
Secretary of the Interior.

JUNE 26, 1963.

[F.R. Doc. 63-6993; Filed, July 2, 1963; 8:50 a.m.]

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Circular Distribution List

GPO 867-793

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER G—EXCHANGES

[Circular No. 2113]

PART 150—EXCHANGES TO ELIMINATE PRIVATE HOLDINGS FROM NATIONAL PARKS AND NATIONAL MONUMENTS

Point Reyes National Seashore, California

A new centerhead and new §§ 150.29 to 150.35 are added to Part 150, to read as follows:

EXCHANGES OF PRIVATELY OWNED PROPERTY WITHIN THE POINT REYES NATIONAL SEASHORE, CALIFORNIA

Sec.
150.29 Authority.
150.30 Application.
150.31 Appraisals; values; costs.
150.32 Notice of publication.
150.33 Deed to the United States.
150.34 Taxes and equalizing money.
150.35 Conveyed property a part of Point Reyes National Seashore.

AUTHORITY: §§ 150.29 to 150.35 issued under R.S. 2478; 43 U.S.C. 1201; Act of Sept. 13, 1962; 76 Stat. 538; 16 U.S.C. sec. 459c.

EXCHANGES OF PRIVATELY OWNED PROPERTY WITHIN THE POINT REYES NATIONAL SEASHORE, CALIFORNIA

§ 150.29 Authority.

The Act of September 13, 1962 (76 Stat. 538; 16 U.S.C., sec. 459c), providing for the establishment of the Point Reyes National Seashore in the State of California, authorizes the Secretary of the Interior, when the public interest will be benefited thereby, to acquire land within the boundaries of the Point Reyes National Seashore by exchange. He may accept title to any non-Federal property located within such area and convey to the grantor of such property any federally owned property under the jurisdiction of the Secretary within Arizona, California, Nevada, and Oregon, notwithstanding any other provision of law. The properties so exchanged shall be approximately equal in fair market value, provided that when such values are not equal the Secretary may accept cash from or pay cash to the grantor in such an exchange in order to equalize the value of the properties exchanged.

§ 150.30 Application.

(a) All preliminary negotiations for exchanges of land are to be conducted with the National Park Service. Any person holding an interest in property within the boundaries of the Point Reyes National Seashore who desires to negotiate an exchange with the United States must file with the Regional Director, Western Region, National Park Service, an informal proposal, in writing, describing the privately owned property which is to be offered to the United States and the property which is desired in exchange therefor. After consultation with the authorized officer of the Bureau which has jurisdiction over the property desired by the proponent, the Regional Director will advise the proponent, in writing, whether the proposal appears feasible and, if so, the amount of money, if any, he believes the proponent would have to pay to equalize values.

(b) Formal application: Any person desiring to effect an exchange of lands hereunder must file in the land office of the Bureau of Land Management having jurisdiction over the State or land district in which selected lands are located, an application, in duplicate, on Form 4–1711, or its equivalent, describing the lands by metes and bounds or other proper description. However, if the selected lands are surveyed, they must be described by legal subdivisions of the public land surveys. The application must be accompanied by the notice received from Regional Director, National Park Service, required by paragraph (a) of this section.

(c) The applicant must be legally capable under the laws of the State of California and the State in which the selected lands are situated of consummating the exchange. The application must state that he is the owner of the interest in the lands offered in exchange and that such offered interest is not the basis of any other exchange.

(d) As used in this part the term "person" includes any person or entity legally capable under the laws of the States involved of conveying and holding land.

§ 150.31 Appraisals; values; costs.

The National Park Service will arrange, by contract or otherwise, for the services of appraisers, for the purpose of appraising both the offered and selected lands or interest. The National Park Service will pay for costs of publication and of securing title evidence for the offered property. It will also reimburse the Bureau having jurisdiction over the selected lands for any costs incurred by it in processing an exchange filed pursuant to § 150.30.

§ 150.32 Notice for Publication.

Upon a determination by the authorized officer of the National Park Service, and of the Bureau which has jurisdiction over the selected property that the value of the offered property is approximately equal to the value of the selected property, that provision has been made for a cash payment sufficient to equalize the value of the properties exchanged, and that the exchange is consistent with the law and regulations and is otherwise in the public interest, notice of the proposed exchange will be published. The notice of publication will give the name and post office address of the applicant, the serial number and date of the application, a reference to the Act of September 13, 1962, and the description of the offered and selected lands. It will

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also state that all persons asserting a claim to the selected lands or having bona fide objections to the exchange may file their protests or other objections in the office designated in the notice, together with evidence that a copy of such protest or objections has been served upon the applicant. The notice will be published once a week for four consecutive weeks in a designated newspaper of general circulation in the county or counties in which the offered lands are situated and in the same manner in a newspaper of general circulation in the county or counties in which the selected lands are situated. Proof of publication of notice shall consist of a statement by the publisher or foreman or other authorized employee of the newspaper, specifying the dates of publication, and attaching thereto a copy of the notice as published.

§ 150.33 Deed to the United States.

The applicant will submit a deed, upon request of the authorized officer of the Bureau of Land Management, conveying the offered land to the United States, executed and acknowledged in accordance with the laws of the State of California. Revenue stamps required by Federal and State law must be affixed to the deed at the expense of the applicant. The deed should recite that it is made "for and in consideration of the exchange of certain lands as authorized by section 3 of the Act of September 13, 1962 (76 Stat. 538)." Deeds must be signed by all persons holding the interest conveyed in the offered land. Deeds must disclose the marital status of the grantor. If a grantor is married, the spouse of the grantor must join in the execution of the deed unless it be fully shown that the grantor's spouse has no interest present or prospective in the land. The deed must not be recorded by the applicant but will be recorded in the proper county land records when the exchange is ready for consummation. A deed executed by a corporation must recite that it was executed pursuant to a resolution or order of its Board of Directors, or other governing body, and a copy of such resolution or order must accompany the deed. The corporate seal must be affixed to both instruments.

§ 150.34 Taxes and equalizing money.

In case taxes which have been assessed or levied on the offered lands constitute a lien against the lands, although such taxes are not due and payable at the time of the recordation of the deed to the United States, the applicant may furnish a bond with a qualified surety for double the amount of taxes paid on the land for the previous year, or, in lieu of a bond, a cash deposit in like amount, to secure the payment of such taxes. When proper evidence of payment in full of such taxes is furnished by the applicant, liability under the bond will be terminated or the cash deposit will be returned to him. Cash deposit or bond for taxes and cash payment of the amount determined to be needed to equalize values will be payable upon request of the authorized officer of the Bureau of Land Management.

§ 150.35 Conveyed property a part of Point Reyes National Seashore.

(a) The Bureau of Land Management will examine the deed, evidence of title, and other evidence required of the applicant and if all be found regular and in conformity with law, and there are no objections, will accept title to the property offered and conveyed to the United States, and will issue a deed or other instrument of transfer for the property selected in exchange, and will transmit to the applicant the cash payment, if any, necessary to balance the values.

(b) All property conveyed to the United States pursuant hereto shall, upon acceptance of title, become a part of the Point Reyes National Seashore, and shall be subject to all laws applicable to such area.

STEWART L. UDALL,
Secretary of the Interior.

JULY 11, 1963.

[F.R. Doc. 63-7474; Filed, July 16, 1963; 8:49 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

2145

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER H—GRAZING

[Circular 2114]

PART 161—THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS

Miscellaneous Amendments

1. Paragraph (c) of § 161.7 is amended to read as follows:

§ 161.7 Transfers of base property; base property qualifications; relinquishments.

* * * * *

(c) *Relinquishment of base property qualifications; limitation; effect.* Upon request, the district manager may accept a written relinquishment or waiver of grazing privileges on the Federal range and of base property qualifications of the base property owned or controlled by the applicant. Upon acceptance of such relinquishment, the base property will lose its qualifications to the extent specified: *Provided,* That no such relinquishment will be accepted without the written consent of the owner or owners, if other than the applicant, and any encumbrancer of the base property, except that if the applicant is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established, such owner's consent will not be required.

2. Paragraph (d) of § 161.8 is amended to read as follows:

§ 161.8 Fees; time of payment; refunds.

* * * * *

(d) *Payment of fees; reduction or increase in numbers; modification of periods of use.* No license or permit shall be issued or renewed until payment of all fees due the United States under the Federal Range Code for Grazing Districts has been made. Fees for licenses and permits are due the United States upon issuance of the fee notice and are payable in advance of the first grazing period and for the full amount indicated on the fee notice; no license or permit shall be effective to authorize grazing use thereunder until such advance payment has been made.[2] A permit may be canceled or reduced pursuant to § 161.9(d) for failure to pay the fee in accordance with the fee notice. Any licensee or permittee who desires to make temporary use of the grazing privileges during any authorized grazing period or periods in a manner other than that authorized in his existing license or permit must file with the district manager a written request for such change in use at least 10 days prior to the beginning of any such grazing period. If the district manager approves the request he will issue an adjusted fee notice accordingly.

STEWART L. UDALL,
Secretary of the Interior.

JULY 11, 1963.

[F.R. Doc. 63-7475; Filed, July 16, 1963; 8:49 a.m.]

[2] Any grazing on the Federal range within grazing districts in the absence of effective license or permit is unlawful and prohibited; such unauthorized grazing shall be deemed in trespass and may be proceeded against as provided in § 161.12, or by other action under the law.

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Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER C—AREAS SUBJECT TO SPECIAL LAWS

[Circular 2115]

PART 116—ABANDONED MILITARY RESERVATIONS

Revocation of Part

Remaining law and regulations governing abandoned military reservations are virtually, if not entirely, obsolete owing to the disposition of the lands that were subject thereto. Furthermore, the regulations in 43 CFR, Part 116, relate to a matter that can be considered on an individual basis, should a case arise.

Therefore, pursuant to the authority under section 2478 of the Revised Statutes (43 U.S.C. 1201), 43 CFR, Part 116, is hereby revoked, effective on the date of publication of this revocation in the FEDERAL REGISTER.

KENNETH HOLUM,
Acting Secretary of the Interior.

JULY 18, 1963.

[F.R. Doc. 63-7807; Filed, July 24, 1963; 8:49 a.m.]

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Title 43—PUBLIC LANDS: INTERIOR

Repl by 2232

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER K—MILITARY AND NAVAL SERVICE

[Circular No. 2116]

PART 181—VETERANS', SOLDIERS' AND SAILORS' RIGHTS

Suspensions of Leases, Permits, Licenses, etc.

Section 181.32(c) is amended to read as follows:

§ 181.32 Suspensions of leases, permits, licenses, etc.

* * * * *

(c) In order to obtain the benefits of section 506 of the act (mineral leases and permits) and to protect the benefits granted by section 501 of the act (other rights) notice of military service must be given in accordance with § 181.24. Such notice will enable the Secretary to take steps to protect the rights involved. Failure to give such notice may result in their loss, as when valid interests of third parties intervene or when the land becomes appropriated to other uses.

KENNETH HOLUM,
Acting Secretary of the Interior.

JULY 18, 1963.

[F.R. Doc. 63-7808; Filed, July 24, 1963; 8:49 a.m.]

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Circular Distribution List

32821

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER A—ALASKA

[Circular 2117]

PART 75—SALES AND LEASES

Revocation of Sections

Because virtually all the lands subject to the regulations have now been appropriated by State selections or otherwise, the regulations in 43 CFR 75.1–75.12 are now obsolete and, pursuant to the authority under section 2478 of the Revised Statutes, are hereby revoked, effective on the date of publication of this revocation in the FEDERAL REGISTER.

KENNETH HOLUM,
Acting Secretary of the Interior.

JULY 18, 1963.

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Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER M—NATIONAL FORESTS, NATIONAL PARKS, AND NATIONAL MONUMENTS

[Circular 2118]

PART 206—NATIONAL PARKS AND NATIONAL MONUMENTS

Revocation of Part

Since the present subject matter of 43 CFR, Part 206, refers to internal coordinating procedures rather than to regulations, it is hereby revoked effective on the date of publication in the FEDERAL REGISTER.

KENNETH HOLUM,
Acting Secretary of the Interior.

JULY 18, 1963.

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Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER T—SALE, LEASE, OR USE, AND ACQUISITIONS

[Circular No. 2119]

PART 259—DISPOSAL OF MINERAL MATERIAL RESOURCES

1. Paragraphs (a) and (f) are revoked and paragraphs (b), (c), (d) and (e) of § 259.1 are renumbered and amended to read as follows:

§ 259.1 Statutory authority.

(a) The Materials Act of July 31, 1947, amended by the acts of July 23, 1955 and September 25, 1962 (30 U.S.C. 601, 602), authorizes the disposal of mineral materials including, but not limited to, petrified wood and common varieties of sand, stone, gravel, pumice, pumicite, cinders and clay, in the public land of the United States (including the O&C lands as described in § 115.2 of this chapter); if the disposal of such materials (1) is not otherwise expressly authorized by law, including, but not limited to the act of June 28, 1934, as amended (43 U.S.C. 315), and the United States mining laws, and (2) is not expressly prohibited by the laws of the United States, and (3) would not be detrimental to the public interest. Disposals of pumicite, within certain areas of the Katmai National Monument, Alaska, may also be made under this act, however, under appropriate contract conditions for the protection of the monument. Act of April 15, 1954 (68 Stat. 53).

(b) Where the lands have been withdrawn in aid of a function of a Federal department or agency other than the Department of the Interior, or of a State, county, municipality, water district or other local governmental subdivision or agency, the Secretary of the Interior may make disposals under the regulations in this part only, with the consent of such Federal department or agency or of such State or local governmental unit. The act provides that the Secretary of Agriculture shall dispose of materials from lands administered by him for national forest purposes or for purposes of title III of the Bankhead-Jones Farm Tenant Act or where withdrawn for any other function of the Department of Agriculture. See 36 CFR, Part 251 for Forest Service regulations relative to the disposal of materials in the national forests.

(c) Disposal of mineral materials under the act may not be made from any lands in any national park or national monument or from any Indian lands or lands set aside or held for the use or benefit of Indians including lands over which jurisdiction has been transferred to the Department of the Interior by Executive Order for the use of Indians.

(d) The act authorizes the Secretary of the Interior in his discretion to permit free use of mineral materials by any Federal or State governmental agency unit or subdivision, including municipalities, or any association or corporation not organized for profit for use other than for commercial or industrial purposes or resale.

2. Section 259.2 is amended by deleting paragraphs (d), (g), (h) and is otherwise amended as follows:

§ 259.2 Definitions.

(a) "Bureau" means Bureau of Land Management, Department of the Interior.

(b) "Director" means the Director of the Bureau of Land Management.

(c) "Authorized Officer" means the Government official who has been duly authorized to sign a contract for the sale of mineral materials from public lands or to supervise operations and take action under such contract.

(d) "Mineral Materials" include, but are not limited to "common varieties" of sand, stone, gravel, pumice, pumicite, cinders, clay and other mineral materials, and petrified wood.

(e) The word "act" when used in this part refers to the act of July 31, 1947, as amended.

3. Section 259.42 is amended by revising paragraph (a) as follows:

§ 259.42 Advertising.

(a) Material sales offered by competitive bidding shall be advertised in a newspaper of general circulation in the area where the material is located and notice of the sale shall be posted in a conspicuous place in the office where bids are to be submitted. Such advertisement shall be published on the same day once a week for two consecutive weeks except that notice of sales amounting to $5,000 or less need be published only once.

4. Paragraph (a) of § 259.45 is amended to read as follows:

§ 259.45 Negotiated sales.

(a) (1) When it is determined by the authorized officer to be in the public interest and where the sale is of property for which it is impracticable to obtain competition, he may sell at not less than the appraised value, without advertising or calling for bids, mineral materials not exceeding $5,000 in value. Where it is impracticable to obtain competition and the materials are to be used in connection with the development of Federal lands under a mineral lease or leases issued by the United States, sales under this paragraph may be made in a sum not exceeding $10,000.

(2) The authorized officer may sell, at not less than the appraised value, without advertising or calling for bids, mineral materials not exceeding $10,000 in value when it is in the public interest and the contract is for materials to be used in connection with a public works improvement program on behalf of a Federal, State, or local governmental agency and the public exigency will not permit the delay incident to advertising.

(3) The total aggregate of negotiated sales which may be made in any one State to or for the benefit of any one person, partnership, association or corporation in any period of twelve consecutive months shall not exceed $10,000.

KENNETH HOLUM,
Acting Secretary of the Interior.

JULY 18, 1963.

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Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER J—INDIAN ALLOTMENTS AND INDIAN LANDS

[Circular 2120]

PART 177—RESTORED AND CEDED INDIAN LANDS

Revocation of Part

Most of the ceded Indian lands that remained in Federal ownership in 1934 have been restored to tribal ownership. The small amounts of remaining lands are withdrawn from disposition under the public land laws. Regulations are no longer necessary, and 43 CFR, Part 177, is hereby revoked, effective on the date of publication of this revocation in the FEDERAL REGISTER.

KENNETH HOLUM,
Acting Secretary of the Interior.

JULY 18, 1963.

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Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER A—ALASKA

[Circular 2121]

PART 65—HOMESTEADS

Second Entries

Section 65.12 is amended to read as follows:

§ 65.12 Second entries.

No showing is required of an applicant for 160 acres in Alaska as to a former homestead entry outside of the State, but if the applicant has made homestead entry, or made an allowable homestead application or filed a location notice of settlement in the State and failed to perfect title to the land, he must, in connection with another application to make homestead entry in the State, make the showing required by the Act of September 5, 1914 (38 Stat. 712; 43 U.S.C. 182) explained in §§ 166.74–166.77 of this chapter.

KENNETH HOLUM,
Acting Secretary of the Interior.

JULY 18, 1963.

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Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER I—HOMESTEADS

[Circular 2122]

PART 168—STOCK-RAISING HOMESTEADS

Revocation of Final Proofs on Original and Additional Entries

Existing regulations in 43 CFR 168.1–168.5 relate to final proofs on claims initiated prior to June 28, 1934. The possibility of the existence of valid claims is so slight that codification of these regulations is no longer necessary. Therefore, pursuant to the authority under section 2478 of the Revised Statutes (43 U.S.C. 1201), Footnotes 1 and 2 to 43 CFR Part 168, and §§ 168.1–168.5, inclusive, are hereby revoked, effective on the date of publication of this revocation in the FEDERAL REGISTER.

STEWART L. UDALL,
Secretary of the Interior.

JULY 29, 1963.

[F.R. Doc. 63-8210; Filed, Aug. 2, 1963; 8:47 a.m.]

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Circular Distribution List

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER N – OFFICERS AND ABSTRACTERS

[Circular 2123]

PART 210—OFFICERS AND EMPLOYEES

OFFICERS AUTHORIZED TO ADMINISTER OATHS IN PUBLIC LAND CASES

Sec.

210.1 Officers qualified; statement and certificate of official character required in certain cases.

210.2 Time and place for transaction of business by the manager.

RULES TO BE OBSERVED IN ADMINISTERING OATHS AND TAKING FINAL PROOFS

210.3 Identity of applicant to be established prior to administering oath.

210.4 Jurat not attached until affidavit is complete and oath administered.

210.5 Manner in which final proof should be made; continuance.

210.6 Protests and adverse claims.

210.7 Officer to obtain full and complete answers and report to the manager.

210.8 Testimony of each claimant and witness to be taken separate and apart from and not within the hearing of the others.

210.9 Parties and witnesses to be advised of laws and penalties for false swearing.

210.10 Proof officer to transmit papers to the manager.

210.11 Fees for administering oath, preparation of paper and writing out testimony; penalty.

210.12 Officer shall not aid in the wrongful or illegal acquisition or use of public lands.

210.13 Officer taking affidavits, proofs, etc., should not participate in purchase, sale, mortgage, exchange, lease, or relinquishment of the lands involved.

210.14 Penalty for violation of the rules.

AUTHORITY: §§ 210.1 to 210.14 issued under R. S. 2478; 43 U. S. C. 1201. Statutes interpreted or applied are cited to text in parentheses.

CROSS REFERENCES: For abstracters, see Part 211 of this chapter. For cases in which requirements as to oaths have been eliminated, see § 101.18 of this chapter. For regulations relating to appeals and contests, see Part 221 of this chapter. For regulations relating to practice in Alaska, see Part 73 of this chapter. For regulations governing practitioners, see Part I of this title.

§ 210.1 Officers qualified; statement and certificate of official character required in certain cases.

(a) Oaths required under the homestead, preemption,[1] timber-culture,[1] desert-land, and timber and stone acts may, in States for which there is a land office, be made before the manager or the acting manager of the land office for the district embracing the land sought; or before any of the following officers inside the county, parish, or land district embracing the land sought, namely, a United States commissioner, a notary public, a judge, a clerk, or a prothonotary of a court of record, a deputy of such clerk or prothonotary, or a magistrate authorized by the laws of or pertaining to the State to administer oaths; or before any such officer outside the county and the land district embracing the land sought who because of geographic or topographic conditions may be the qualified officer nearest to the land or most accessible from it. In States for which there is no land office, the required oaths may be made before any qualified officer in the State.

(b) The official character of any officer not using a seal of office, other than a manager or an acting manager, must be certified under seal by the clerk of the court having the record of his appointment and qualifications. If, in States for which there is a land office, an oath be administered outside the county and the land district embracing the land sought, the applicant must show by a statement, satisfactory to the Bureau of Land Management, that the oath was made before an officer who because of geographic or topographic conditions was the qualified officer nearest to the land sought or most accessible from it. Such showing, however, will not be required as part of the final proof if the proof be taken in the town or city in which the newspaper printing the final proof notice is published.[2]

(c) The papers in cases arising under the statutes above specified must be filed in the land office for the district embracing the land sought, if there be any such office; otherwise in the Bureau of Land Management in Washington, D. C. An application is not acceptable if dated more than 10 days before being deposited in the mails for filing in the appropriate office.

(R. S. 2294, as amended, 44 Stat. 830; 43 U. S. C. 254, 5 U. S. C. 92a)

§ 210.2 Time and place for transaction of business by the manager.

Applications to make entry cannot be received by the manager out of office hours, nor elsewhere than at his office, nor can affidavits or proofs be taken by him except in the regular and public discharge of his ordinary duties.

RULES TO BE OBSERVED IN ADMINISTERING OATHS AND TAKING FINAL PROOFS

§ 210.3 Identity of applicant to be established prior to administering oath.

No oath in support of any application, entry, proof, or claim to public lands should be administered to any stranger until he has first been reliably made known and identified to the officer administering it as the identical person he represents himself to be.

§ 210.4 Jurat not attached until affidavit is complete and oath administered.

No jurat or certificate should be attached to any oath, affidavit, application, proof, or other written statement affecting public lands until such oath, affidavit, application, proof, or statement has been fully written out and completed, and until all blank spaces in any blank form prescribed or used therefor shall have been fully filled out or erased, and

[1] The preemption and timber-culture laws were repealed by the act of March 3, 1891 (26 Stat. 1095; 43 U. S. C. 1181, 1197), with certain exceptions specified in that act.

[2] 18 U.S.C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

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43 CFR Part 210

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not then until after the same has been sworn to and signed by the affiant before and in the presence of the attesting officer and fully read by or made known to the affiant.

§ 210.5 Manner in which final proof should be made; continuance.

Final proofs should in every case be made at the time and place advertised, and before the officer named in the notice, at his regularly established office or place of business, and not elsewhere. Between the hours of 8 a.m. and 6 p.m. on the day advertised the officer named in the notice should call the case for hearing, and should the claimant fail to appear with his witnesses between those hours, or the taking of the proof fail to be completed on that day, the officer should continue the case until the next day, and on that day or any succeeding day should the claimant or his witnesses fail to so appear he should proceed in like manner to continue the case from day to day until the expiration of 10 days from the date advertised, but proof can not be taken after the expiration of the tenth day. Upon continuing any case in the manner indicated the officer continuing the same should in the most effective way available give notice of such continuance to all interested parties.

CROSS REFERENCE: For proofs, generally, see Part 106 of this chapter.

§ 210.6 Protests and adverse claims.

Protestants, adverse claimants, or other persons desiring to be present at the taking of any proof for the purpose of cross-examining the claimant and his witnesses, or to submit testimony in rebuttal, should be allowed to appear for that purpose on the day advertised, or upon any succeeding day to which the case may be continued. If any person appears for the purpose of filing a formal protest against the acceptance or approval of the proofs or contest against the entry and does nothing more than file same, such protest or contest should be received and forwarded to the manager for his consideration and action.

§ 210.7 Officer to obtain full and complete answers and report to the manager.

All final proofs should be reduced to writing by or in the presence of and under the supervision of the officer taking them, and in all cases where no representative of the Government appears for the purpose of making cross-examinations the officer taking the proof should use his utmost endeavor and diligence so to examine the entryman and his witnesses as to obtain full, specific, and unevasive answers to all questions propounded on the blank forms prescribed for the taking of such proofs, and in addition to so doing he should make and reduce to writing and forward to the manager with the proof such other and further rigid cross-examination as may be necessary clearly to develop all pertinent and material facts affecting or showing the validity of the entry, the entryman's compliance with the law, and the credibility of the claimant and his witnesses. And, in addition to this, he should inform the manager of any facts not set out in the testimony which in his judgment cast suspicion upon the good faith of the applicant or the validity of the entry.

§ 210.8 Testimony of each claimant and witness to be taken separate and apart from and not within the hearing of the others.

The testimony of each claimant should be taken separate and apart from and not within the hearing of either of his witnesses, and the testimony of each witness should be taken separate and apart from and not within the hearing of either the applicant or of any other witness, and both the applicant and each of the witnesses should be required to state in and as a part of the final proof testimony given by them that they have given such testimony without any actual knowledge of any statement made in the testimony of either of the others.

§ 210.9 Parties and witnesses to be advised of laws and penalties for false swearing.

Officers taking affidavits and testimony should call the attention of parties and witnesses to the laws respecting false swearing and the penalties therefor and inform them of the purpose of the Government to hold all persons to a strict accountability for any statements made by them.

§ 210.10 Proof officer to transmit papers to the manager.

The officer who has taken a proof should, after duly certifying the papers, promptly transmit them to the manager. In no case should the transmittal thereof be left to the claimant.

§210.11 Fees for administering oath, preparation of paper and writing out testimony; penalty.

No fee in excess of 25 cents can be lawfully charged or received for administering the oath to any affidavit, application, proof, or any other written statement affecting public lands; but there is no restriction on the fee the officer may charge for preparation of any paper, except that the total amount to be received for taking and writing out the final proof testimony of a claimant or of a witness, and administering the oath thereto, shall not exceed the sum of $1. Any officer demanding or receiving greater sums than are here specified for such services will be subject to indictment and punishment under amended section 2294 of the Revised Statutes (43 U. S. C. 254).

§ 210.12 Officer shall not aid in the wrongful or illegal acquisition or use of public lands.

No officer authorized to take final proofs shall, directly or indirectly, either as agent, attorney, or otherwise, in any manner or by any means cause, aid, encourage, induce, or assist any person wrongfully or illegally to acquire, or attempt to acquire, any title to, interest in, use of, or control over any public lands belonging to the United States.

§ 210.13 Officer taking affidavits, proofs, etc., should not participate in purchase, sale, mortgage, exchange, lease, or relinquishment of the lands involved.

No officer authorized to take final proofs should, either for himself or as agent, attorney, or representative of another, induce or attempt to induce any owner, entryman, or other person to purchase, sell, mortgage, exchange, lease, or relinquish any lands which are involved, may be involved, or have been involved in any affidavit, or proof, executed before him, and he should not, either for himself or as agent for any other person, in any manner solicit or make to any entryman, owner, or claimant any loan or attempted loan the payment of which is to be secured by a lien or mortgage upon such lands; and he should not be or remain a member or stockholder of any copartnership or company which shall, either directly or indirectly, be interested in or benefited by any such sale, mortgage, exchange, lease, relinquishment, or loan, nor accept nor receive in any manner any fee, commission, compensation, emolument, or benefit arising therefrom, except for the lawful discharge of his official duties.

§ 210.14 Penalty for violation of the rules.

Any officer violating any of the rules set forth in §§ 210.3 to 210.14 may be deprived of the right of further taking final proofs, and when any commissioner has so offended his action may be called to the attention of the court by which he was appointed, with appropriate recommendations. All managers and State Directors have been charged to use their utmost diligence in seeing that the rules in §§ 210.3 to 210.14 are fully and in good faith complied with, and directed to investigate and fully report any apparent violations thereof which may come to their notice.

Repl. by C-2139

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER L—MINERAL LANDS

[Circular 2124]

PART 192—OIL AND GAS LEASES

Rentals

Paragraph (b)(3) of § 192.80 is amended and new paragraphs (d) and (e) are added as follows:

§ 192.80 Rentals.

* * * * *

(b) On leases wholly or partly within the known geologic structure of a producing oil or gas field:

* * * * *

(3) If issued competitively, unless a different rate of rental is prescribed in the lease, an annual rental of $2 per acre or fraction thereof prior to a discovery on the leased lands. After a discovery, if the lease is unitized, such rental shall be payable on the nonparticipating acreage only, and royalty as provided in the lease and elsewhere in this Part shall be payable on the participating acreage.

* * * * *

(d) A lease subject to the provisions of section 31 of the act, as amended by section 1(7) of the Act of July 29, 1954 (30 U.S.C. 188) on which there is no well capable of producing oil or gas in paying quantities, shall automatically terminate by operation of law if the lessee fails to pay the full rental due on or before the anniversary date of the lease. However, if the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely. The "anniversary date" of a lease means the same day and month in succeeding years as that on which the lease first became effective. The anniversary date of a lease does not change.

(e) If on the anniversary date of the lease less than a full year remains in the lease term, the rentals due shall be in the same proportion to the annual rental as the period remaining in the lease term is to a full year. The rentals shall be prorated on a monthly basis for the full months, and on a daily basis for the fractional months remaining in the lease term. For the purpose of prorating rentals for a fractional month, each month will be deemed to consist of 30 days.

(1) If the term of a lease for which prorated rentals have been paid is further extended to or beyond the next anniversary date of the lease, rentals for the balance of the lease year shall be due and payable on the date following the date through which the prorated rentals were paid. If the rentals are not paid for the balance of the lease year, the lease will be subject to cancellation by the Secretary after he has given notice to the lessee in accordance with section 31 of the act. However, if the anniversary date occurs before the end of the notice period, the rental for the ensuing lease year shall nevertheless be due on the anniversary date, and failure to pay the full rental for that year on or before that date shall cause the lease to terminate automatically by operation of law, without relieving the lessee of liability for rental due for the balance of the previous lease year. (30 U.S.C. 189; 41 Stat. 437.) If the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely.

STEWART L. UDALL,
Secretary of the Interior.

OCTOBER 11, 1963.

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Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER D—CERTIFICATES AND SCRIP

[Circular No. 2125]

PART 131—BOUNTY LAND WARRANTS

Revocation

Public Law 87-558 (76 Stat. 246) repealed the laws relating to military bounty land warrants and provided for cancellation of recorded warrants. The regulations in 43 CFR Part 131 are now obsolete, and pursuant to authority contained in section 2478 of the Revised Statutes, are hereby revoked, effective on the date of publication of this revocation in the FEDERAL REGISTER.

STEWART L. UDALL,
Secretary of the Interior.

OCTOBER 24, 1963.

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Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER D—CERTIFICATES AND SCRIP

[Circular No. 2126]

PART 133—SCRIP

Supreme Court and Surveyor General Scrip; Revocation

The Act of August 5, 1955 (69 Stat. 534) provides that scrip not recorded pursuant thereto cannot be accepted as a basis for acquisition of lands. No Supreme Court or surveyor general scrip have been recorded and the time for recording has expired. The regulations pertinent thereto, 43 CFR 133.2 and 133.3, are therefore obsolete and, pursuant to the authority contained in section 2478 of the Revised Statutes, are hereby revoked effective on the date of publication of this revocation in the FEDERAL REGISTER.

STEWART L. UDALL,
Secretary of the Interior.

OCTOBER 24, 1963.

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Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—APPLICATIONS AND ENTRIES

[Circular No. 2127]

PART 101—GENERAL REGULATIONS INVOLVING APPLICATIONS AND ENTRIES

Rules of Construction

A new center heading and § 101.21 are added to Part 101, to read as follows:

RULES OF CONSTRUCTION

§ 101.21 Words and phrases.

Except where the context of the regulation or of the Act of the Congress on which it is based, indicates otherwise, when used in the regulations of this chapter:

(a) Words importing the singular include and apply to the plural also;

(b) Words importing the plural include the singular;

(c) Words importing the masculine gender include the feminine as well;

(d) Words used in the present tense include the future as well as the present;

(e) The words "person" and "whoever" include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals;

(f) "Officer" and "authorized officer" include any person authorized by law or by lawful delegation of authority to perform the duties described;

(g) "Signature" or "subscription" includes a mark when the person making the same intended it as such;

(h) "Oath" includes "affirmation", and "sworn" includes "affirmed";

(i) "Writing" includes printing and typewriting as well as holographs, and "copies" include all types of reproductions on paper, including photographs, multigraphs, mimeographs and manifolds.

(j) The word "company" or "association", when used in reference to a corporation, shall be deemed to embrace the words "successors and assigns of such company or association", in like manner as if these last-named words, or words of similar import, were expressed.

STEWART L. UDALL,
Secretary of the Interior.

NOVEMBER 27, 1963.

[F.R. Doc. 63-12523; Filed, Dec. 3, 1963; 8:46 a.m.]

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Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER L—MINERAL LANDS

[Circular 2128]

PART 192—OIL AND GAS LEASES

Miscellaneous Amendments

1. New §§ 192.43a and 192.43b and new subparagraph (a)(4) to § 192.141 are added to Title 43, Code of Federal Regulations to read as follows:

§ 192.43a Sole party in interest; statement of interest.

A sole party in interest in a lease or offer to lease is a party who is and will be vested with all legal and equitable rights under the lease. No one is, or shall be deemed to be, a sole party in interest with respect to a lease in which any other party has any of the interests described in this section. The requirement of disclosure in an offer to lease of an offeror's or other parties' interest in a lease, if issued, is predicated on the departmental policy that all offerors and other parties having an interest in simultaneously filed offers to lease shall have an equal opportunity for success in the drawings to determine priorities. Additionally, such disclosures provide the means for maintaining adequate records of acreage holdings of all such parties where such interests constitute chargeable acreage holdings. An "interest" in the lease includes but is not limited to record title interests, overriding royalty interests, working interests, operating rights or options, or any agreements covering such "interests". Any claim (existing at the time when the lease is issued) or any prospective or future claim (which is based on conditions existing at the time when the lease is issued) to an advantage or benefit from a lease, or any participation or any defined or undefined share in any increments, issues, or profits, which may be derived from or which may accrue in any manner from the lease pursuant to any agreement or understanding existing at the time when the lease is issued, is deemed to constitute an "interest" in the lease.

§ 192.43b Collusive filings.

When any person, association, corporation, or other entity or business enterprise files an offer to lease for inclusion in a drawing, and an offer (or offers) to lease is filed for the same lands in the same drawing by any person or party acting for, on behalf of, or in collusion with the other person, association, corporation, entity or business enterprise, under any agreement, scheme, or plan which would give either, or both, a greater probability of successfully obtaining a lease, or interest therein, in any public drawing, held pursuant to § 192.43 of this part, all offers filed by either party will be rejected. Similarly, where an agent or broker files an offer to lease for the same lands in behalf of more than one offeror under an agreement that, if a lease issues to any of such offerors, the agent or broker will participate in any proceeds derived from such lease, the agent or broker obtains thereby a greater probability of success in obtaining a share in the proceeds of the lease and all such offers filed by such agent or broker will also be rejected. Should any such offer be given a priority as a result of such a drawing, it will be similarly rejected. In the event a lease is issued on the basis of any such offer, action will be taken for the cancellation of all interests in said lease held by each person who acquired any interest therein as a result of collusive filing unless the rights of a bona fide purchaser as provided for in § 191.15 of this Chapter intervene, whether the pertinent information regarding it is obtained by or was available to the Government before or after the lease was issued.

§ 192.141 Requirements for filing of transfers.

(a) * * *

(4) Each instrument of transfer must describe the lands involved in the same manner as described in the lease or in the manner required by § 192.42a.

(30 U.S.C. 189, 43 U.S.C. 1201)

JANUARY 22, 1964.

STEWART L. UDALL,
Secretary of the Interior.

[F.R. Doc. 64-834; Filed, Jan. 28, 1964; 8:48 a.m.]

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Circular Distribution List

GPO 839-526

Replaced by 2236

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER A—ALASKA

[Cir. 2129]

PART 63—GRAZING

Miscellaneous Amendments

1. Paragraph (d) is revised and a new paragraph (i) is added to § 63.3 as follows:

§ 63.3 Definitions.

* * * * *

(d) "Authorized Officer" or "Manager" means the designated official of the Bureau of Land Management, in whose district the lands involved are situated, who has been delegated the authority to issue grazing leases;

* * * * *

(i) "Animal unit month" means the forage consumed or grazing privileges represented by the grazing of one cow or its equivalent for one month. For the purpose of this definition, one cow shall be considered the equivalent of one horse or five sheep or five goats.

2. The caption of § 63.11 is amended, paragraph (a) is revised, and a new paragraph (c) is added as set forth below.

§ 63.11 Annual rental; amount; adjustment; waiver; effect of failure to pay.

(a) Unless otherwise provided, each lessee shall pay to the Bureau of Land Management such rental per acre, per head, or per animal unit month, as may be determined to be a fair charge for grazing of livestock on the leased land. The rental under any grazing lease may be adjusted every 3 years. The date for making the annual payment will be specified in the lease. If the rental is to be paid according to the number of animals grazed, no charge will be made for the natural increase of grazing animals until the beginning of the following lease year.

* * * * *

(c) The first rental payment required and the return of the proposed lease duly executed by the prospective lessee shall be made within 30 days of receipt of the lease form by the prospective lessee; if the rental is not paid or the lease is not returned within the prescribed time, the offer shall be null and void and of no effect, and all rights of the prospective lessee thereunder or under the application upon which it is based shall be considered as terminated. Subsequent rental payments for succeeding lease periods are payable in advance. In the event such payment is not received in the proper office by the last day of the current lease period or within the time prescribed in the billing notice, whichever is the later, the lease shall be considered canceled and all rights terminated thereunder as of the end of such current lease period; except the lease shall not terminate if the lessee submits payment to the proper office within a grace period of sixty days following the last day of the current lease period together with a showing satisfactory to the authorized officer that the delay in rental payment was for unavoidable reasons and that termination of the lease would cause undue hardship to the lessee.

3. Section 63.13 is revised to read as follows:

§ 63.13 Free grazing permits.

Any person may file application in duplicate on Form 4–469 for a permit to graze, free of charge, not to exceed the number of livestock whose products are consumed or whose work is directly and exclusively used by the applicant or his family, for a term of not more than one year. The permit for such use will be issued on Form 4–1309.

4. Paragraphs (b) and (c) of § 63.16 are revised as follows:

§ 63.16 Report of grazing operations; assignments; renewals.

* * * * *

(b) No part of the leased land may be subleased. Any proposed assignment of a lease, in whole or in part, must be filed in duplicate with the authorized officer within 90 days of its execution. Assignments will be executed on Form 4–1574 and must be accompanied by the application Form 4–469, executed in duplicate, together with the same showing by the assignee as to qualifications and stock development schedule as would be required of applicants for a new lease, including financial responsibility when specifically requested by the manager. The assignee's acceptance of the lease offered pursuant to the grazing lease assignment shall constitute his acceptance of the lease terms. No assignment will be recognized nor will it confer on the assignee any rights to the leased area until a lease therefor is issued to him.

(c) An application for renewal of a grazing lease should be executed and filed in duplicate on Form 4–469 not less than 4 months nor more than 8 months before the expiration date of the lease term. The renewal lease, if issued, will contain such terms and conditions as the authorized officer may determine.

5. Paragraph (b) of § 63.17 is modified as follows:

§ 63.17 Stock driveways; crossing permits; quarantine regulations.

* * * * *

(b) A permit for the crossing of livestock on a stock driveway or other public lands, including lands under grazing lease, may be issued free of charge, upon the filing of an application on Form 4–1367, in duplicate, with the authorized officer at least 30 days prior to the date the crossing is to begin.

6. Section 63.20 is revised to read as follows:

§ 63.20 Permits for construction and maintenance of improvements; fences; assignment of improvements.

Application for a permit to construct and maintain range improvements should be filed with the authorized officer in duplicate on Form 4–1115. The lessee, upon obtaining an executed permit from the authorized officer, may construct, maintain, and utilize authorized fences, buildings, corrals, reservoirs, wells, or other improvements needed for the exercise of the grazing privileges under the lease. The lessee will be required to comply with the laws of the State of Alaska with respect to the construction and maintenance of fences, but any such fence shall be constructed to permit the ingress and egress of miners, prospectors for minerals, and other persons entitled to enter such area for lawful purposes. The lessee upon written approval by the authorized officer, may improve by seeding or reseeding within the lease area and may harvest hay, or ensilage from such seeded or reseeded areas provided that the forage so produced is used primarily as feed for the lessee's livestock. The authorized officer may approve the assignment of range improvements upon receipt of an application for such assignment on Form 4–1286.

Published in 29 F.R. 1803, February 6, 1964 - Effective 30th calendar day following this publication date.

Circular Distribution List

7. Section 63.23 is renumbered as § 63.24 and a new § 63.23 is added as set forth below.

§ 63.23 Grazing trespass.

(a) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across lands that are subject to lease or permit under the provisions of this part or within a stock driveway, without a lease or other authorization from the Bureau of Land Management, is prohibited and constitutes trespass. Trespassers will be liable in damages to the United States for the forage consumed and for injury to Federal property, and may be subject to civil and criminal prosecution for such unlawful acts. A lessee who grazes livestock in violation of the terms and conditions of his lease by exceeding numbers specified, or by allowing the livestock to be on Federal land in an area or at a time different from that designated in his lease shall be in default and shall be subject to the provisions of § 63.19. Under section 2 of the act, any person who wilfully grazes livestock on public lands without authority, shall, upon conviction, be punished by a fine of not more than $500.

(b) Whenever it appears that a violation exists the authorized officer shall serve written notice upon the alleged violator. The notice shall set forth the act or omission constituting such violation and will allow the party involved a reasonable specified time from receipt of notice to demonstrate that there has been no violation or that he has since achieved compliance. If the showing is satisfactory to the authorized officer he will close the case; if satisfactory showing is not made within the time allowed, the violation alleged in the notice will be deemed to have been wilful.

(c) Where the owner of the trespassing livestock, or his representative, is known, the authorized officer shall determine the amount of the damage to the public land and other property of the United States and shall make a demand for payment upon the alleged violator setting forth the foregoing values including the value of the forage consumed. Such forage value shall be computed at the commercial rates, if susceptible to proof by reasonably available and reliable data; otherwise, a minimum charge of $2 per animal unit month for trespass not clearly wilful will be made. Where the trespasses are repeated and/or wilful, a minimum charge of $4 per animal unit month for forage consumed will be charged. All offers for settlement for value of forage consumed and for damage to the public land or to other property of the United States resulting from an alleged violation of any provision of the act or regulations found within 43 CFR 63.1 et seq. in the amount of $2,000 or less may be accepted by the authorized officer. Offers for settlement in excess of $2,000 will be transmitted to the State Director for appropriate action. An offer of settlement will not constitute satisfaction of civil liability for consumed forage and damage involved until finally accepted by the authorized officer or the State Director, and in no event will it relieve the violator of criminal liability. No lease or permit will be issued or renewed until payment of any amount found to be due the United States under this section has been offered.

8. Section 63.24 is revised to read as follows:

§ 63.24 Hearings; appeals.

(a) Any lessee of or applicant for grazing privileges may procure a review of any action or decision of the authorized officer by filing with such officer an application for a hearing, stating the nature of the action or decision complained of and the grounds of complaint. The filing of any such application and the conduct of the proceedings before an examiner shall be governed by the rules of practice pertaining to contests (Part 221 of this chapter).

(b) An appeal may be taken from any decision of the authorized officer to the Director of the Bureau of Land Management, and from any decision of the Director to the Secretary of the Interior, pursuant to the rules of practice (Part 221 of this chapter).

STEWART L. UDALL,
Secretary of the Interior.

JANUARY 30, 1964.

[F.R. Doc. 64-1158; Filed, Feb. 5, 1964; 8:46 a.m.]

7. Section 63.27 is renumbered as § 63.24 and a new § 63.25 is added as set forth below.

§ 63.23 Grazing trespass.

(a) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across lands that are subject to lease or permit under the provisions of this part or § 62.10 a stock driveway, without a lease or other authorization from the Bureau of Land Management, is prohibited and constitutes trespass. Trespassers will be liable in damages to the United States for any forage consumed and for injury to Federal property, and may be subject to civil and criminal prosecution for such willful acts. A lessee will ensure livestock in violation of the terms and conditions of his lease or exceeding numbers specified, or by allowing the livestock to be on Federal land in an area or at a time different from that designated in his lease shall be in default and shall be subject to the provisions of § 62.19. Under section 2 of the act, any person who willfully grazes livestock on public lands without authority shall, upon conviction, be punished by a fine of not more than $500.

(b) Whenever it appears that a violation exists the authorized officer shall serve written notice upon the alleged violator. The notice shall set forth the act or omission constituting such violation and will allow the party involved a reasonable specified time from receipt of notice to demonstrate that there has been no violation or that he has since achieved compliance. If the showing is satisfactory to the authorized officer it will close the case; if satisfactory showing is not made within the time allowed the violation alleged in the notice will be deemed to have been willful.

(c) Where the owner of the trespassing livestock, or his representative, is known, the authorized officer shall determine the amount of the damages to the public land and other property of the United States and shall make a demand for payment upon the alleged violator setting forth the reported values including the value of the forage consumed. Such forage value shall be computed at the commercial rates, if possible to prove by reasonably available and reliable data, otherwise, a minimum charge of $2 per animal unit month for trespass not clearly willful will be made. Where the trespasses are repeated and/or willful, a minimum charge of $4 per animal unit month for forage consumed will be charged. All offers for settlement for value of forage consumed and for damage to the public land or to other property of the United States resulting from an alleged violation of any provision of the act or regulations issued within 43 CFR 22.1 et seq. in the amount of $3 000 or less may be accepted by the authorized officer. Offers for settlement in excess of $3,000 will be transmitted to the State Director for appropriate action. An offer of settlement will not constitute satisfaction of civil liability for consumed forage and damage involved until finally accepted by the authorized officer or the State Director and in no event will it relieve the violator of criminal liability. No lease or permit will be issued or renewed until payment of any amount found to be due the United States under this section has been received.

8. Section 63.24 is revised to read as follows:

§ 63.24 Damage appeals.

(a) Any lessee or permittee for grazing or trespass may request a review of any action or decision of the authorized officer by filing with such officer an application for a hearing, stating the nature of the action or decision complained of and the grounds of complaint. The filing of any such application and the conduct of the proceedings before an examiner shall be governed by the rules of practice pertaining to contests (Part 221 of this chapter).

(b) An appeal may be taken from any decision of the authorized officer to the Director of the Bureau of Land Management, and from any decision of the Director to the Secretary of the Interior, pursuant to the rules of practice (Part 221 of this chapter).

STEWART L. UDALL,
Secretary of the Interior.

JANUARY 30, 1964.

[F.R. Doc. 64-1165; Filed, Feb. 5, 1964; 8:47 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—APPLICATIONS AND ENTRIES

[Cir. No. 2130]

PART 101—GENERAL REGULATIONS INVOLVING APPLICATIONS AND ENTRIES

Rejection of Applications

(1) Paragraph (b) of § 101.2 is amended to correct the reference therein which reads "§ 216.30" to read "§ 216.2."

(2) The caption to § 101.2 is revised and new paragraph (c) is added to read as follows:

§ 101.2 Payments required to effect segregation of land; rejection of applications.

* * * * *

(c) Except where regulations provide otherwise, all applications must be accepted for filing. However, applications which are accepted for filing must be rejected and cannot be held pending possible future availability of the land or interests in land, when approval of the application is prevented by:

(1) Withdrawal or reservation of the lands;

(2) An allowed entry or selection of record;

(3) An irrevocable lease which grants the lessee exclusive use of the land;

(4) Classification under appropriate law;

(5) The fact that for any reason the land has not been made subject, or restored, to the operation of the public land laws.

STEWART L. UDALL,
Secretary of the Interior.

JANUARY 30, 1964.

[F.R. Doc. 64-1159; Filed, Feb. 5, 1964; 8:46 a.m.]

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Circular Distribution List

GPO 839-735

Repl. by C-2165

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—APPLICATIONS AND ENTRIES

[Cir. 2131]

PART 101—GENERAL REGULATIONS INVOLVING APPLICATIONS AND ENTRIES

Elimination of Requirements of Oaths on Written Statements in Public Land Matters

Section 101.18 is amended to add a new paragraph, designated (d):

§ 101.18 Elimination of the requirements of oaths on written statements in public land matters.

* * * * *

(d) False statements as to any material fact made by an applicant in connection with applications, allowance of which is discretionary with the authorized officer, are a proper basis for rejection of the applications.

STEWART L. UDALL,
Secretary of the Interior.

JANUARY 30, 1964.

[F.R. Doc. 64-1160; Filed, Feb. 5, 1964; 8:46 a.m.]

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Circular Distribution List

GPO 839-736

Repl. by C-2173

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER F—COLOR OF TITLE AND RIPARIAN CLAIMS

[Circular No. 2132]

PART 140—GENERAL REGULATIONS GOVERNING COLOR OF TITLE CLAIMS

Acreage Limitations

Section 140.10 is amended to read as follows:

§ 140.10 Acreage limitations.

The maximum area for which patent may be issued for any claim under the act is 160 acres. Where an area held under a claim or color of title is in excess of 160 acres, the Secretary has authority under the act to determine what particular subdivisions, not exceeding 160 acres, may be patented.

STEWART L. UDALL,
Secretary of the Interior.

FEBRUARY 4, 1964.

[F.R. Doc. 64-1317; Filed, Feb. 10, 1964; 8:48 a.m.]

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Circular Distribution List

GPO 840-047

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—APPLICATIONS AND ENTRIES

[Circular No. 2133]

PART 101—GENERAL REGULATIONS INVOLVING APPLICATIONS AND ENTRIES

Use of Certified Mail; When Mailing Requirements Are Met

The caption of § 101.19 is revised, the existing paragraph is designated as (a) and new paragraphs (b) and (c) are added as follows:

§ 101.19 Use of certified mail; when mailing requirements are met.

* * * * *

(b) Where the regulations in this chapter provide for communication by mail by the authorized officer, the requirement for mailing is met when the communication, addressed to the addressee at his last address of record in the appropriate office of the Bureau of Land Management, is deposited in the mail.

(c) Where the authorized officer uses the mails to send a notice or other communication not provided for by Subchapter P of this Title to any person entitled to such a communication under the regulations of this chapter, that person will be deemed to have received the communication if it was delivered to his last address of record in the appropriate office of the Bureau of Land Management, regardless of whether it was in fact received by him. An offer of delivery which cannot be consummated at such last address of record because the addressee had moved therefrom without leaving a forwarding address or because delivery was refused or because no such address exists will meet the requirements of this section where the attempt to deliver is substantiated by post office authorities.

STEWART L. UDALL,
Secretary of the Interior.

FEBRUARY 12, 1964.

[F.R. Doc. 64-1578; Filed, Feb. 17, 1964; 8:45 a.m.]

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Circular Distribution List

GPO 840-048

Repl. by C-2173

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER F—COLOR TITLE AND RIPARIAN CLAIMS

[Circular No. 2134]

PART 140—GENERAL REGULATIONS GOVERNING COLOR OF TITLE CLAIMS

Classes of Claims

Section 140.3 is amended to read as follows:

§ 140.3 Classes of claims.

(a) The claims recognized by the act will be referred to in this part as claims of class 1, and claims of class 2. A claim of class 1 is one which has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years, on which valuable improvements have been placed, or on which some part of the land has been reduced to cultivation. A claim of class 2 is one which has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color of title for the period commencing not later than January 1, 1901, to the date of application, during which time they have paid taxes levied on the land by State and local governmental units.

(b) A claim is not held in good faith where held with knowledge that the land is owned by the United States. A claim is not held in peaceful, adverse possession where it was initiated while the land was withdrawn or reserved for Federal purposes.

STEWART L. UDALL,
Secretary of the Interior.

FEBRUARY 12, 1964.

[F.R. Doc. 64-1579; Filed, Feb. 17, 1964; 8:45 a.m.]

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Circular Distribution List

Replaced by 2189

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER L—MINERAL LANDS

[Circular 2135]

PART 192—OIL AND GAS LEASES

PART 200—MINERAL DEPOSITS IN ACQUIRED LANDS AND UNDER RIGHTS-OF-WAY

Miscellaneous Amendments

1. Paragraphs (a), (b), (c), (e)(1), and (4)(i), and (g)(1) of § 192.42 are amended to read as follows:

§ 192.42 Offer to lease, and issuance of lease.

(a) Except as provided in § 192.43, to obtain a noncompetitive lease an offer to accept such lease must be made on Form 4–1158. "Offer to lease and lease for oil and gas," or on unofficial copies of that form in current use: *Provided,* That the copies are exact reproductions of one page of both sides of the official approved one page form and are without additions, omissions or other changes or advertising. Form 4–1158 or a valid reproduction of the official form will also constitute the lease when signed by the Manager of the Land Office.

(b) Five copies of Form 4–1158, or valid reproduction thereof, for each offer to lease shall be filed in the proper land office, or for land or deposits in States for which there are no land offices, with the Director of the Bureau of Land Management, Washington 25, D.C.[1] For the purpose of this part an offer will be considered filed when it is received in the proper office during business hours.

(c) If there is any variation in the land descriptions among the five Forms 4–1158, the copy showing the date and time of receipt in the land office will control.

* * * * *

(e) Each offer, when first filed, shall be accompanied by:

(1) A filing fee of $10 which will be retained as a service charge, even though the offer should be rejected or withdrawn in whole or in part.

* * * * *

[1] Offers for lands or minerals deposits in the following States should be filed at the land office named: North Dakota or South Dakota, land office at Billings, Montana; Nebraska or Kansas, at Cheyenne, Wyoming; Oklahoma, at Santa Fe, New Mexico.

(4)(i) If the offer is signed by an attorney in fact or agent, it shall be accompanied by separate statements over the signatures of the attorney in fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney in fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one. The statement must be accompanied by a copy of any such written agreement or understanding. If such an agreement or understanding exists, the statement of the attorney in fact or agent should set forth the citizenship of the attorney in fact or the agent or other person and whether his direct and indirect interests in oil and gas leases, applications, and offers including options for such leases or interests therein exceed 246,080 acres in any one State, of which no more than 200,000 acres may be held under option, or exceeds the permissible acreage in Alaska as set forth in § 192.3(a). The statement by the principal (offeror) may be filed within 15 days after the filing of the offer. This requirement does not apply in cases in which the attorney in fact or agent is a member of an unincorporated association (including a partnership), or is an officer of a corporation and has an interest in the offer or the lease to be issued solely by reason of the fact that he is a member of the association or a stockholder in the corporation.

* * * * *

(g)(1) Except as provided in subparagraph (2) of this paragraph, an offer which is not filed in accordance with the regulations in this part will be rejected and will afford the offeror no priority.

* * * * *

2. Paragraphs (b) and (c) of § 192.43 are amended to read as follows:

§ 192.43 Availability of lands to further lease offers where noncompetitive lease expires, is cancelled, relinquished or terminated.

* * * * *

(b) On the third Monday of each month, or the first working day thereafter, if the land office is not officially open on the third Monday, there will be posted on the bulletin board in each land office a list of the lands in leases which expired, were cancelled, were relinquished in whole or in part, or which terminated, together with a notice stating that such lands will become subject to the simultaneous filings of lease offers, in accordance with paragraph (c) of this section, from the time of such posting until 10 a.m. on the fifth working day thereafter. The posted list will describe the lands by leasing units identified by parcel numbers, which will be supplemented by a description of the lands in accordance with § 192.42a, i.e., by subdivision, section, township and range if the lands are surveyed or officially protracted, or if unsurveyed, by metes and bounds. The leasing units will be established to coincide to the extent possible with the lands in an expired, cancelled, relinquished or terminated lease except that where two or more such leases were contiguous and contained a total of 640 acres or less, they may be consolidated into one leasing unit.

(c) Offers to lease such designated leasing units by parcel numbers must be submitted on a "Simultaneous Oil and Gas Entry Card" (Form 4–1664) signed and fully executed by the applicant or his duly authorized agent in his behalf. The entry card will constitute the applicant's offer to lease the numbered leasing unit by participating in the drawing to determine the successful drawee. By signing and submitting the entry card, the applicant agrees that he will be bound

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Circular Distribution List

to a lease on Form 4–1158 for the described parcel if such a lease is issued to him as a result of the drawing. Only one entry card will be drawn for each numbered leasing unit.

(1) Only one complete leasing unit, identified by parcel number may be included in one entry card. Lands not on the posted list may not be included therein.

(2) The entry card must be accompanied by separate remittances covering the filing fee of $10 and the first year's advance rental. The advance rental must be paid by cash, money order, certified check, bank draft, or bank cashier's check. The filing fee may be paid by a similar remittance or by uncertified check.

(3) Upon determination of the successful drawee for a particular leasing unit, the first year's rental will not be returnable and will be earned and deposited in the United States Treasury upon execution of the lease in behalf of the United States. However, if an applicant withdraws his entry card prior to the drawing or if his offer to lease is rejected, the advance rental will be returned to him, and if the successful drawee is unqualified to receive the lease, the lands in the numbered leasing unit for which such entry card was submitted shall be included in a simultaneous filing drawing procedure to be held during the next or a following month thereafter. Unsuccessful drawees will be notified accordingly by the return of their respective entry cards.

* * * * *

§ 192.44 [Deleted]

3. Section 192.44 is deleted.

4. Paragraphs (a), (b), and (d) of § 200.8 are amended to read as follows:

§ 200.8 Offer to lease and issuance of lease.

(a) Except as provided in § 192.43 of this chapter, to obtain a noncompetitive oil and gas lease of an existing mineral interest whether the Government's interest be whole or fractional, an offer to lease must be made on Form 4–1196, "Offer to Lease and Lease for Oil and Gas; Noncompetitive Acquired Lands" or unofficial copies of that form in current use: *Provided*, That the copies are exact reproductions of one page of both sides of the official approved one-page form and are without additions, omissions or other changes or advertising. Form 4–1196, or a valid reproduction, will also constitute the lease, when signed by the authorized signing officer of the Bureau of Land Management.

(b) Seven copies of Form 4–1196, or valid reproduction thereof, for each offer to lease shall be filed in the land office for the State or land district in which the land is situated, or for land or deposits in States for which there are no land offices, with the Bureau of Land Management, Washington 25, D.C., except that offers for lands or deposits in North Dakota or South Dakota, must be filed in the land office at Billings, Montana; for lands or deposits in Nebraska or Kansas in the land office at Cheyenne, Wyoming; and for lands or deposits in Oklahoma and Texas in the land office at Santa Fe, New Mexico. For the purpose of this part an offer will be considered filed when it is received in the proper office during business hours.

* * * * *

(d) Except as provided in § 192.42 (g)(2) of this chapter an offer which is not filed in accordance with the applicable regulations in Part 192 of this chapter or in this part will be rejected and will afford the applicant no priority.

* * * * *

STEWART L. UDALL,
Secretary of the Interior.

FEBRUARY 12, 1964.

[F.R. Doc. 64–1580; Filed, Feb. 14, 1964; 8:52 a.m.]

GPO 840-050

to a lease on Form 4-1195 for the described parcel if such a lease is issued to him as a result of the drawing. Only one entry card will be drawn for each numbered leasing unit.

(1) Only one complete leasing unit, identified by parcel number may be included in one entry card. Lands not on the posted list may not be included thereto.

(2) The entry card must be accompanied by separate remittances covering the filing fee of $10 and the first year's advance rental. The advance rental must be paid by cash, money order, certified check, bank draft, or bank cashier's check. The filing fee may be paid by a similar remittance or by uncertified check.

(3) Upon determination of the successful drawee for a particular leasing unit, the first year's rental will not be returnable and will be carried and deposited in the United States Treasury upon execution of the lease in behalf of the United States. However, if an applicant withdraws his entry card prior to the drawing or if his offer to lease is rejected, the advance rental will be returned to him; and if the successful drawee is unqualified to receive the lease, the lands in the numbered leasing unit for which such entry card was submitted shall be included in a simultaneous filing drawing procedure to be held during the next or a following month thereafter. Unsuccessful drawees will be notified accordingly by the return of their respective entry cards.

* * * * *

§ 192.44 [Deleted]

3. Section 192.44 is deleted.

4. Paragraphs (a), (b), and (d) of § 200.8 are amended to read as follows:

§ 200.8 Offer to lease and issuance of leases.

(a) Except as provided in § 192.42 of this chapter, to obtain a noncompetitive oil and gas lease of an existing mineral interest whether the Government's interest be whole or fractional, an offer to lease must be made on Form 4-1196, "Offer to Lease and Lease for Oil and Gas; Noncompetitive Acquired Lands" or unofficial copies of that form in current use: *Provided*, That the copies are exact reproductions of one face or both sides of the official approved one-page form and are without additions, omissions or other changes or alterations. Form 4-1196, or a valid reproduction will also constitute the lease when signed by the authorized signing officer of the Bureau of Land Management.

(b) Seven copies of Form 4-1196 or valid reproduction thereof, for each offer to lease shall be filed in the land office for the State or land district in which the land is situated, or for land or deposits in States for which there are no land offices, with the Bureau of Land Management, Washington 25, D.C., except that offers for lands or deposits in North Dakota or South Dakota must be filed in the land office at Billings, Montana; for lands or deposits in Nebraska or Kansas in the land office at Cheyenne, Wyoming; and for lands or deposits in Oklahoma and Texas in the land office at Santa Fe, New Mexico. For the purpose of this part an offer will be considered filed when it is received in the proper office during business hours.

* * * * *

(d) Except as provided in § 192.42(g)(3) of this chapter an offer which is not filed in accordance with the applicable regulations in Part 192 of this chapter or in this part, will be rejected and will afford the applicant no priority.

* * * * *

STEWART L. UDALL,
Secretary of the Interior.

FEBRUARY 12, 1964.

[F.R. Doc. 64-1857; Filed, Feb. 14, 1964; 8:45 a.m.]

Land Office
1245 North 29th Street
Billings, Montana

In reply refer to:
910:3100

April 3, 1964

Memorandum

To: Land Office Personnel

From: Land Office Manager

Subject: Simultaneous Filings, April 1964

The list of lands available for simultaneous filings, all filings made on those lands, and subsequent actions by the land office in connection with such filings for the month of April will be in accordance with revised regulations 43 CFR 192.43, Circular 2135.

Attached is an outline of the steps to be followed in handling the filings up to the point of adjudication. This outline is to be viewed strictly as a guide to help in the work of processing the offers. Since this is our first go around under the revised regulations there will no doubt be many changes in the procedure we follow in handling the offers. For that reason this outline has not been formalized in an order.

[illegible]

Step by step procedure in handling simultaneous oil and gas filings pursuant to 43 CFR 192.43, Circular No. 2135.

1. Prepare the list in the usual manner with the following modifications:

   (a) Assign a parcel number for each leasing unit. The leasing unit will be established to coincide to the extent possible with the lands in the terminated, cancelled, expired or relinquished lease.

   (b) In addition to the parcel number there will also be shown the month such as 1-4: 1 being the parcel number and 4 the month of April.

   (c) Each parcel will be assigned a current serial number. This serial number will be in parenthesis following the Township and Range description.

   (d) Each parcel will show the complete description and total acreage.

2. Copies of the list will be furnished Minerals section, Records, Docket and Accounts Unit.

3. As offers are filed, minerals section will be advised of the parcel numbers. Frequency of such advice will depend on the number of filings. Minerals section will type the offers showing the land description and serial number. As completed the offers will be forwarded to Docket.

4. Docket will type the serial page, attach to offer and retain in serial sequence. The offer will be noted as to the USGS report.

5. Public Service Unit will indicate on the list in some manner the parcels where filings have been made.

6. The filing fee remittance, advance rental and Receipt Form 4-1520 will be processed through the validating machine. A single receipt will be validated for each filing.

7. After processing through the validating machine the rental remittance, remitter's copy and accounting advice Form 4-1520 will be stapled to the reverse side of Part 1 of the entry card, 4-1664. The document will be stapled face out in the order, front to back, accounting advice, remitter's copy and remittance.

8. The case copy of Form 4-1520 will be stapled face out to the reverse side of Part 2 of Form 4-1664.

9. Public Service Unit will detach Part 1 of Form 4-1664 and forward to Accounts who will file by transaction number in a locked safe. Part 2 of the entry card, with drawing stub attached, will be sorted by parcel number and retained by Public Service Unit.

10. Filing fee remittances accompanied by collection copy of Form 4-1520 will be forwarded to Accounts.

11. No pre-adjudication will be performed. All entry cards filed will be accepted. At the end of the filing period and upon completion of the validation process detach the drawing stub, (Part 3 of Form 4-1664), and retain by parcel grouping. For each parcel grouping arrange Part 2 of the entry card in numerical order by pre-printed number on the card.

12. Either Docket or Public Service Unit will type the equivalent of a Master Serial Page which will show the parcels on which filings have been made, names of the individuals who made the filings, the pre-printed number on the entry card, and the serial number for the parcel. This information will be obtained from Part 2 of the entry card.

13. Announce drawing at least one day in advance, allow the master serial page to be made available to the public at least one full day prior to the drawing. Conduct a separate drawing for each parcel and draw only one stub, (Part 3 of Form 4-1664) for each parcel. On each successful entry stub note the serial number for that parcel.

14. Immediately after the drawing Public Service Unit will furnish Records Unit a copy of the Simultaneous List on which is indicated the parcels on which filings have been made. Records Unit will annotate the plats from this list.

15. For the successful drawee Public Service will match the drawing stub with Part 2 of the entry, by pre-printed number, and make a machine copy of Part 2.

16. Note master serial page as to winner. Post a copy on the bulletin board.

17. Forward drawing stub, Part 2 and machine copy of Part 2 to Accounts who will match with Part 1, by validating number, and prepare Form 4-1179. All of the above material will be forwarded to cashier who will run thru validating machine, plus Parts 2 and 3 of the entry card

18. Cashier will return the following to accounts:

    (a) Rental remittance
    (b) Remitter's copy of Form 4-1520
    (c) Accounting advice of Form 4-1520
    (d) White, pink and yellow copies of Form 4-1179

19. Cashier will forward to Docket the following:

    (a) Parts 1, 2 and 3 entry card

    (b) Green and Golden of Form 4-1179

20. Docket will do the following:

    (a) Complete offer

    (b) Complete serial page

    (c) Insert serial number on Parts 1 and 2 of entry card

    (d) Attach Part 2 of entry cart to original copy of lease offer

    (e) Attach machine copy of Part 2 of entry card to lessee's copy of offer

    (f) Prepare case file jacket

    (g) Cause Parts 1 and 3 of entry card to become part of case file

21. Docket will retain Parts 2 and 3 of the unsuccessful drawees by parcel number.

22. Accounts will return advance rental remittance of all unsuccessful drawees. This is done by inserting Part 1 of the entry card, to which is attached the remittance and remitter's copy of Form 4-1520, in a window envelope. The accounting advice copy of Form 4-1520 will be removed prior to mailing.

Sirl

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

In Reply Refer To:
3123 (6.02d-1)

Instruction Memo No. 64-120
Expires 12/31/64

March 6, 1964

To: State Directors, Land Office Managers,
District Managers at Anchorage and Fairbanks

From: Assistant Director, Lands & Minerals Management

Subject: Procedures for oil and gas simultaneous filings

Attached for your information and guidance are several copies of the step-by-step procedures to be followed in connection with simultaneous oil and gas filings pursuant to the revised regulations published as Circular 2135 in the Federal Register on February 15, 1964.

The revised regulations eliminate the requirement of the filing of the Offer to Lease Form 4-1158 and require, in lieu thereof, that all filings be made on a special prenumbered drawing entry card, Bureau Form 4-1664. The new regulations also provide that the lands on the posted list will be described by parcel number for each leasing unit and that they must be applied for by this parcel number.

It is necessary, therefore, that a parcel number be assigned to each leasing unit. The leasing units will be established to coincide to the extent possible with the lands in the terminated lease, except that where two or more such leases were contiguous and contained a total of 640 acres or less, such leases may be consolidated into one leasing unit. Consolidation should not be made under any other circumstances. The posted list should also include the acreage of the leasing unit immediately following the legal description of the lands. Extreme care must be exercised to make certain that the legal description and acreage are correct as the applicant will apply for the lands by parcel number only. Parcel numbers should be consecutive for the entire list including acquired lands as well as lands in different States where applicable.

The new procedures will be followed beginning with the April filings and it is expected that the special drawing cards will be delivered to the various offices within the next ten days.

James F. Doyle

Distribution:

FAO's, FCR's, HE's
IA - 15
Insp - 1
O&M - 5

Step by Step Procedures for Simultaneous Oil and Gas Filings
Pursuant to 43 CFR 192.43, Circular No. 2135 (29 F.R. 2502)

1. Prepare the monthly list in the usual manner with the following modifications:

   A. Add a statement that filings must be on the "Simultaneous Oil and Gas Entry Card", Bureau Form 4-1664. Delete any reference to Form 4-1185 or 4-1196.
   B. Assign a parcel number for each leasing unit.
   C. Include the acreage for each leasing unit.

2. Process the filing fee remittances, advance rental remittances, and Receipt Form 4-1520, through the validating machine. A single receipt covering the filing fee and advance rental remittances will be validated for each filing. 1/

3. After processing the filing fee and rental through the validating machine, detach Part 1 of the entry card (Form 4-1664) and staple it to the advance rental remittance. The stapling will be done in a manner that will facilitate filing of this portion of the card by machine transaction number. To do this the accounting advice copy of the Form 4-1520 will be stapled face out to the reverse side of Part 1 of the entry card Form 4-1664. 2/

4. Staple the case file copy of Form 4-1520 to the reverse side of Part 2 of Form 4-1664. 3/

5. File Part 1 of Form 4-1664, with rental attached, by transaction number in a locked file cabinet or safe. If Form 4-1179 is used file by pre-printed number on that form.

6. Sort Part 2 of Form 4-1664 with the drawing stub (Part 3) and the case file copy of Form 4-1520 attached, by parcel number.

7. Upon completion of the validation process for all filings, detach the drawing stubs (Part 3 of Form 4-1664) for each separate parcel.

1/. Offices not having a validating machine should use Bureau Form 4-1179 in lieu of Form 4-1520 to control the filing fee and rental payments.

2/. Offices not having a validating machine should staple the pink receipt copy of Form 4-1179 to Part 1 of the entry card.

3/. Offices not having a validating machine should staple the accounting advice and case file copies of Form 4-1179 to Part 2 of the entry card.

8. Arrange office record copy of drawing cards (Part 2 of Form 4-1664) in numerical order by pre-printed number on the card for each separate parcel, or if Form 4-1179 is used, arrange in numerical order by pre-printed number on that form.

9. Place drawing stubs for each parcel in receptacle; thoroughly mix, and draw one stub for each parcel to determine priority for that parcel. Conduct separate drawing for each parcel.

10. Prepare lease forms for each leasing unit, inserting land description by subdivision section, township and range. In many offices it would be desirable to do this well in advance of the drawing, depending on the interest in the particular land.

11. Match drawing stub of successful drawee to Parts 1 and 2 of the entry card. Part 2 is located by printed number on card and Part 1 is located by validating machine transaction number. Staple Part 2 of card to file copy of the lease form. Make machine copy of Part 2 of drawing card and attach to lessee's copy of lease.

12. Assign serial number to each successful drawee. Insert serial number on Parts 2 and 3 of card and on the lease forms. File Parts 1 and 3 of drawn entry card and the case file copy of Form 4-1520 in case record. Prepare serial register, execute lease, note records, and send copy to lessee.

13. Deposit rental checks for all successful drawees.

14. File drawing stubs of unsuccessful drawees in separate file by parcel number. Disposition schedules for Parts 2 and 3 will be furnished at a later date.

15. Prepare and maintain a record of all successful drawees. This can be done by inserting the serial number and name of successful drawees on a copy of the original list and posting on the bulletin board.

16. Return advance rental remittances of all unsuccessful drawees. This is done by inserting the remaining Part 1 of all cards to which are attached the advance rental remittances in window envelopes.

Repl. by 2189

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER C—MINERALS MANAGEMENT

[Circular 2136]

PART 3100—PUBLIC DOMAIN LEASING UNDER 1920 ACT

PART 3120—OIL AND GAS

PART 3210—ACQUIRED LANDS LEASING ACT

Miscellaneous Amendments

1. Section 3101.2 is amended to read as follows:

§ 3101.2 Rights of aliens.

Aliens may not acquire or hold any direct or indirect interest in permits or leases, except that they may own or control stock in corporations holding permits or leases if the laws of their country do not deny similar or like privileges to citizens of the United States. If any appreciable percentage of the stock of a corporation is held by aliens who are citizens of a country denying similar or like privileges to United States citizens, its application will be denied.

2. New paragraphs (c) and (d) are added to § 3122.1 as follows:

§ 3122.1 Classes and term.

* * * * *

(c) Competitive and noncompetitive oil and gas leases for lands in which the United States owns an undivided fractional oil and gas interest may be issued pursuant to the regulations in this part, subject to the provisions of this section.

(d) Rentals, minimum royalties and royalties payable for lands in which the United States owns an undivided fractional interest shall be in the same proportion to the rentals, minimum royalties and royalties provided in §§ 3125.1, 3125.2 and 3125.3, respectively, of this part, as the undivided fractional interest of the United States in the oil and gas underlying the leased lands is to the full mineral interest.

3. In § 3123.2 paragraphs (c)(1) and (g) are amended and paragraphs (e)(1) and (h) are added to read as follows:

§ 3123.2 What should accompany offer.

* * * * *

(c)(1) Except in a case where an officer of a corporation signs an offer on behalf of the corporation (as to which see paragraph (g) of this section), evidence of the authority of the attorney-in-fact or agent to sign the offer and lease, if the offer is signed by such attorney or agent on behalf of the offeror. Where such evidence has previously been filed in the same land office where the offer is filed, a reference to the serial number of the record in which it has been filed, together with a statement by the attorney-in-fact or agent that such authority is still in effect will be accepted.

* * * * *

(e) * * *

(1) Where evidence of the authority to act of a guardian, trustee, an executor or administrator, or where articles of association, including partnership agreements, have previously been filed pursuant to regulations in this section, a reference by serial number to the record in which such evidence has previously been filed, together with a statement as to any amendments thereof will be accepted.

* * * * *

(g) If the offeror is a corporation, the offer must be accompanied by a statement showing (1) the State in which it is incorporated, (2) that it is authorized to hold oil and gas leases and that the officer executing the lease is authorized to act on behalf of the corporation in such matters, (3) the percentage of voting stock and of all the stock owned by aliens or those having addresses outside of the United States, and (4) the names and addresses of the stockholders holding more than 10 percent of the stock of the corporation. Where the stock owned by aliens is over 10 percent, additional information may be required by the Bureau before the lease is issued or production is obtained. A separate statement from each stockholder owning or controlling more than 10 percent of the stock of the corporation setting forth his citizenship and holdings must also be furnished. Where such material has previously been filed a reference by serial number to the record in which it has been filed, together with a statement as to any amendments will be accepted.

(h) An offer for a fractional interest noncompetitive oil and gas lease must be filed on a form approved by the Director in accordance with § 3123.1. The offer must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States in each tract covered by the offer to lease. Ordinarily, the issuance of a noncompetitive fractional interest oil and gas lease to one who, upon such issuance, would own less than 50 percent of the

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Circular Distribution List

operating rights in any such tract, will not be regarded as in the public interest, and an offer leading to such result will be rejected.

4. Subparagraph (a)(1) and paragraph (b) of § 3128.2 are amended to read as follows:

§ 3128.2 Requirements for filing of transfers.

(a)(1) Except for assignments of royalty interests all instruments of transfer of a lease or of an interest therein, including assignments of working interests, operating agreements, and subleases, must be filed for approval within 90 days from the date of final execution and, except for record title assignments, must contain all of the terms and conditions agreed upon by the parties thereto, together with similar evidence and statements as that required of an offeror under § 3123.2.

* * * * *

(b) Where an attorney-in-fact or agent, in behalf of the assignor or assignee, signs the instrument of transfer or the application for approval, evidence of the authority of the attorney-in-fact or agent to sign such assignment or application must be furnished. Where such evidence has previously been filed in the same land office where the assignment is filed, a reference to the serial number of the record in which it has been filed will be accepted. In those cases where the application for approval of an assignment is signed by an attorney-in-fact or agent there must also be submitted similar statements and evidence from the principal and the agent or attorney-in-fact to that required by § 3123.2.

5. Section 3128.6 is amended to read as follows:

§ 3128.6 Royalty interests in oil and gas leases and assignments thereof.

Royalty interests in oil and gas leases constitute holdings or control of lands and deposits within the meaning of section 27 of the act. In order that the holdings of the assignee may be verified, all assignments of royalty interests should be filed for record purposes within 90 days from the date of execution, but no formal approval will be given. Any such assignment will be deemed to be valid provided it is accompanied by a statement over the assignee's signature that he is a citizen of the United States and that his interests in oil and gas leases do not exceed the acreage limitation as provided in § 3120.1–2 and by the statement as to overriding royalties required by § 3125.4. If any portion of this statement is found to be false the assignment shall be invalid.

6. Paragraph (d) of § 3212.3 is amended to read as follows:

§ 3212.3 Leases of future or fractional interests.

* * * * *

(d) *Offers for fractional interest oil and gas leases other than future fractional interests.* An offer for a fractional present interest noncompetitive lease must be executed on a form approved by the Director and it must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States in each tract covered by the offer to lease. Ordinarily, the issuance of a lease to one who, upon such issuance, would own less than 50 percent of the operating rights in any such tract, will not be regarded as in the public interest, and an offer leading to such results will be rejected.

(30 U.S.C. 189 et seq., 43 U.S.C. 1201)

STEWART L. UDALL,
Secretary of the Interior.

MARCH 27, 1964.

[F.R. Doc. 64–3523; Filed, Apr. 8, 1964; 8:48 a.m.]

GPO 841 - 194

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER C—MINERALS MANAGEMENT

[Circular 2136]

PART 3100—PUBLIC DOMAIN LEASING UNDER 1920 ACT

PART 3120—OIL AND GAS

PART 3100—PUBLIC DOMAIN LEASING UNDER 1920 ACT

Subpart 3100—Public Domain Leasing Under 1920 Act; General

Sec.
3100.0–2 Objectives of the leasing act.
3100.0–5 Definitions.
3100.1 Lands to which leasing act does not apply.
3100.2 Survey for leasing.
3100.3 Multiple development.

Subpart 3101—Lessees

3101.1 Who may hold leases and permits.
3101.2 Rights of aliens.
3101.3 Interests held in common.

Subpart 3102—Fees and Rentals

3102.1 Filing fees.
3102.2 Payment of rentals.
3102.3 Waiver, suspension, or reduction of rental or minimum royalty.
3102.4 Suspension of operations and production.
3102.5 Oil and gas leases involved in proceedings under the Multiple Mineral Development Act of August 13, 1954.

Subpart 3103—Reserved, Withdrawn or Segregated Lands

3103.1 Reserved or segregated lands.
3103.2 Special stipulations.

Subpart 3104—Applicants and Holders

3104.1 Simultaneous applications or offers for lease.
3104.2 Bona fide purchasers.
3104.3 Limitation on time to institute suit to contest a Secretary's decision.

Subpart 3105—Helium

3105.1 Recovery.

Subpart 3106—Bonds

3106.1 Bonds with individual sureties.

AUTHORITY: The provisions of this Part 3100 issued under sec. 32, 41 Stat. 450, sec. 1, 44 Stat. 301, as amended; 30 U.S.C. 189, 271. Interpret or apply sec. 5, 44 Stat. 1058 as amended; 30 U.S.C. 285.

Subpart 3100—Public Domain Leasing Under 1920 Act; General

§ 3100.0–2 Objectives of the leasing act.

The act of February 25, 1920 (41 Stat. 437; 30 U.S.C., 181 et seq.), as amended and supplemented, including the amendatory act of August 8, 1946 (60 Stat. 950; 30 U.S.C., sec. 181 et seq.) and the act of September 2, 1960 (74 Stat. 781; 30 U.S.C., sec. 181 et seq.), the act of February 7, 1927 (44 Stat. 1057; 30 U.S.C., 281–287) and the act of April 17, 1926 (44 Stat. 301; 30 U.S.C., 271–276) as amended, hereinafter called "the act", provide for the leasing of oil and gas, coal, potassium, sodium, phosphate, and oil shale, native asphalt, solid and semisolid bitumen, and bituminous rock including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried and lands containing such deposits owned by the United States in the public domain and deposits of sulphur and the public lands containing such deposits in the States of Louisiana and New Mexico, except as stated in § 3100.1.

§ 3100.0–5 Definitions.

(a) *Sole party in interest; statement of interest.* A sole party in interest in a lease or offer to lease is a party who is and will be vested with all legal and equitable rights under the lease. No one is, or shall be deemed to be, a sole party in interest with respect to a lease in which any other party has any of the interests described in this section. The requirement of disclosure in an offer to lease of an offeror's or other parties' interest in a lease, if issued, is predicated on the departmental policy that all offerors and other parties having an interest in simultaneously filed offers to lease shall have an equal opportunity for success in the drawings to determine priorities. Additionally, such disclosures provide

the means for maintaining adequate records of acreage holdings of all such parties where such interests constitute chargeable acreage holdings. An "interest" in the lease includes, but is not limited to, record title interests, overriding royalty interests, working interests, operating rights or options, or any agreements covering such "interests." Any claim or any prospective or future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues, or profits which may be derived from or which may accrue in any manner from the lease based upon or pursuant to any agreement or understanding existing at the time when the offer is filed, is deemed to constitute an "interest" in such lease.

§ 3100.1 Lands to which leasing act does not apply.

The mineral leasing act does not apply (a) to lands containing the mineral deposits named in § 3100.0–3 where such lands are situated in (1) national parks and monuments; (2) Indian reservations; (3) incorporated cities, towns and villages, or (4) naval petroleum and oil shale reserves; nor (b) to lands acquired under the act of March 1, 1911 (36 Stat. 961; 16 U.S.C. 513–519) known as the Appalachian Forest Reserve Act, or other acquired lands.

§ 3100.2 Survey for leasing.

Unsurveyed lands containing oil shale, and unsurveyed lands embraced in applications for lease based upon discovery of valuable deposits of potassium, sodium or sulphur under a prospecting permit, must be surveyed by the Government at the expense of the applicant prior to the issuance of a lease of the lands. To secure such a survey, the applicant must obtain from the appropriate cadastral engineer an estimate of the cost of the survey and deposit with him the estimated amount. After the survey has been accepted and the plat filed in the land office the application will be adjusted to the resulting subdivisions and the cost of the survey will be ascertained by prorating the total cost of surveying the township to the area to be leased. The amount thus ascertained will be credited to the appropriation for surveying the public lands and the balance of the deposit, if any, returned to the depositor or his authorized representative. The survey of unsurveyed lands for any coal lease, or for a competitive lease for phosphate, potassium, sodium, oil, or gas, or sulphur will be made at the expense of the Government prior to the issuance of a lease of the lands.

§ 3100.3 Multiple development.

The granting of a permit or lease for the prospecting, development, or production of deposits of any one mineral will not preclude the issuance of other permits or leases for the same land for deposits of other minerals with suitable stipulations for simultaneous operation, nor the allowance of applicable entries, locations, or selections of leased lands with a reservation of the mineral deposits to the United States.

Subpart 3101—Lessees

§ 3101.1 Who may hold leases and permits.

Mineral prospecting permits and mineral leases may be issued only to (a) citizens of the United States; (b) associations of such citizens; (c) corporations organized under the laws of the United States or of any State or Territory thereof; or (d) in the case of coal, oil, oil shale, or gas, municipalities. A mineral lease or permit will not be issued to a minor but oil and gas leases may be issued to legal guardians or trustees of minors in their behalf.

§ 3101.2 Rights of aliens.

Aliens may not acquire or hold any direct or indirect interest in permits or leases, except that they may own or control stock in corporations holding permits or leases if the laws of their country do not deny similar or like privileges to citizens of the United States. If any appreciable percentage of the stock of a corporation is held by aliens who are citizens of a country denying similar or like privileges to United States citizens, its application will be denied.

§ 3101.3 Interests held in common.

An association shall not be deemed to exist between the parties to a contract for development of leased lands, whether or not coupled with an interest in the lease, nor between co-lessees, but each party to any such contract or each co-lessee will be charged with his proportionate interest in the lease. No holding of acreage in common by the same persons in excess of the maximum acreage specified in the law for any one lessee or permittee for the particular mineral deposit so held will be permitted.

Subpart 3102—Fees and Rentals

§ 3102.1 Filing fees.

Offers for noncompetitive oil and gas leases and all applications for prospecting permits, leases or licenses, excepting licenses to relief agencies must be accompanied by a filing fee of $10 for each application or offer. Such a fee will be retained as a service charge even though the application or offer should be rejected or withdrawn in whole or in part.

§ 3102.2 Payment of rentals.

(a) Unless otherwise directed by the Secretary, rentals and royalties under all leases and permits issued under the act shall be paid to the Manager of the appropriate land office. All remittances to Bureau of Land Management offices shall be made payable to the Bureau of Land Management.

(b) All rentals and royalties on producing oil and gas leases, communitized leases in producing well units, unitized leases in producing unit areas, leases on which compensatory royalty is payable, and all payments under subsurface storage agreements and easements for directional drilling are to be paid to the Regional Oil and Gas Supervisor of the United States Geological Survey. Rentals and royalties on producing mining leases are to be paid to the Regional Mining Supervisor. All remittances to Survey offices shall be made payable to the United States Geological Survey.

§ 3102.3 Waiver, suspension, or reduction of rental or minimum royalty.

(a) In order to encourage the greatest ultimate recovery of coal, phosphate, potassium, sodium, oil shale, oil, or gas and sulphur, and in the interest of conservation, the Secretary of the Interior whenever he determines it necessary to promote development or finds that the leases cannot be successfully operated under the terms provided therein may waive, suspend, or reduce the rental or minimum royalty or reduce the royalty on an entire leasehold, or on any deposit, tract, or portion thereof segregated for royalty purposes.

(b) An application for any of the above benefits shall be filed in triplicate in the office of the oil and gas supervisor for oil and gas leases or the office of the mining supervisor for coal, phosphate, potassium, sodium, oil shale and sulphur leases. It must contain the serial number of the leases, the land office name, the name of the record title holder and operator or sublessee and the description of the lands by legal subdivision.

(1) Each application involving oil or gas shall show the number, location, and status of each well that has been drilled, a tabulated statement for each month covering a period of not less than six months prior to the date of filing the application of the aggregate amount of oil or gas subject to royalty computed in accordance with the oil and gas operating regulations, the number of wells counted as producing each month, and the average production per well per day.

(2) Each application involving coal, phosphate, potassium, sodium, oil shale and sulphur shall show the number and location of each mine, a map showing the extent of the mining operations, a tabulated statement of the minerals mined and subject to royalty for each month covering a period of not less than 12 months next prior to the date of filing of the application, and the average production per day mined for each month and complete information as to why the minimum production was not attained.

(c) Every application must contain a detailed statement of expenses and costs of operating the entire lease, the income from the sale of any leased products, and all facts tending to show whether the wells or mines can be successfully operated upon the royalty or rental fixed in the lease. Where the application is for a reduction in royalty full information shall be furnished as to whether royalties or payments out of production are paid to others than the United States, the amounts so paid and efforts made to reduce them. The applicant must also file agreements of the holders of the lease and of the royalty holders to a permanent reduction of all other royalties from the leasehold to an aggregate not in excess of one-half the Government royalties.

§ 3102.4 Suspension of operations and production.

(a) Applications by lessees for relief from the producing requirements or from all operating and producing requirements of mineral leases shall be filed in triplicate in the office of the regional oil and gas supervisor for oil and gas leases, and in the office of the regional mining supervisor for all other leases. By Departmental Order No. 2699 and Geological Survey Order No. 218 of August 11, 1952, the regional oil and gas supervisors and the regional mining supervisors are authorized to act on applications for suspension of operations or production or both filed pursuant to this section and to terminate suspensions of this kind which have been or may be granted. As to oil and gas leases, no suspension of operations and production will be granted on any lease in the absence of a well capable of production on the leasehold, except where the Secretary directs a suspension in the interest of conservation. Complete information must be furnished showing the necessity of such relief.

(b) The term of any lease will be extended by adding thereto any period of suspension of all operations and production during such term pursuant to any direction or assent of the Secretary.

(c) A suspension shall take effect as of the time specified in the direction or assent of the Secretary. Rental and minimum royalty payments will be suspended during any period of suspension of all operations and production directed or assented to by the Secretary, beginning with the first day of the lease month on which the suspension of operations and production becomes effective or, if the suspension of operations and production becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. The suspension of rental and minimum royalty payments shall end on the first day of the lease month in which operations or production is resumed. Where rentals are creditable against royalties and have been paid in advance, proper

credit will be allowed on the next rental or royalty due under the lease.

(d) No lease shall be deemed to expire by reason of a suspension of either operations or production only, pursuant to any direction or assent of the Secretary.

(e) If there is a well capable of producing on the leased premises and all operations and production are suspended pursuant to any direction or assent of the Secretary, the commencement of drilling operations only will be regarded as terminating the suspension as to operations but not as to production, and as terminating the period of suspension to be added to the term of the lease as provided in paragraph (b) of this section and the period of suspension of rental and minimum royalty payments as provided in paragraph (c) of this section. However, as provided in paragraph (d) of this section, the term of the lease will not be deemed to expire so long as the suspension of operations or production remains in effect.

(f) The minimum annual production requirements of a lease issued under the act for coal, phosphate, potassium, sodium, oil shale or sulphur shall be proportionately reduced for that portion of a lease year for which suspension of operations and production is directed or granted by the Secretary of the Interior in the interest of conservation. The relief authorized under this section may also be obtained for any oil and gas leases included within an approved unit or cooperative plan of development and operation.

§ 3102.5 Oil and gas leases involved in proceedings under the Multiple Mineral Development Act of August 13, 1954.

If any oil and gas lease issued under Section 17 of the Mineral Leasing Act, as amended (30 U.S.C. sec. 226), includes an area with respect to which a verified statement is filed by a mining claimant under section 7(c) of the Multiple Mineral Development Act of 1954 (68 Stat. 708), as amended, asserting the existence of a conflicting unpatented mining claim or claims upon which diligent work is being prosecuted the payment of rentals and the running of time under such lease shall be suspended as to the lands in conflict from the first day of the month following the filing of such verified statement until a final decision is rendered in the matter.

Subpart 3103—Reserved, Withdrawn or Segregated Lands

§ 3103.1 Reserved or segregated lands.

With respect to lands embraced in a reservation or segregated for any particular purpose the lessee shall conduct operations in conformity with such requirements as may be made by the Bureau of Land Management for the protection and use of the land for the purpose for which it was reserved or segregated, so far as may be consistent with the use of the land for the purpose of the lease, which latter shall be regarded as the dominant use unless otherwise provided or separately stipulated.

§ 3103.2 Special stipulations.

Offerors for noncompetitive oil and gas leases and applicants for permits, leases, and licenses for lands, the surface control of which is under the jurisdiction of the Department of Agriculture, will be required to consent to the inclusion therein of the stipulation on a form approved by the Director. Where the lands have been withdrawn for reclamation purposes the offeror or applicant will be required to consent to the inclusion of a stipulation on the approved forms. If the land is potentially irrigable, or if the land is within the flow limits of a reservoir site or within the drainage area of a constructed reservoir, or if withdrawn for power purposes, or where the lands have been withdrawn as Game Range Lands, Coordination Lands, or Alaska Wildlife Areas, the offeror or applicant will be required to consent to the inclusion of a stipulation on an approved form. Additional conditions may be imposed to protect the land withdrawn if deemed necessary by the agency having jurisdiction over the surface.

Subpart 3104—Applicants and Holders

§ 3104.1 Simultaneous applications or offers for lease.

(a) Where applications or offers received by mail or filed over the counter at the same time are in conflict the right of priority of filing will be determined by public drawing.

(b) The priorities of all applications or offers to lease made and filed in accordance with the provisions of § 3123.9, whether or not they are in conflict, will be determined by public drawing in the manner provided in § 2311.2-3 of this chapter.

§ 3104.2 Bona fide purchasers.

(a) The Act of September 21, 1959 (73 Stat. 571), as amended by the Act of September 2, 1960 (74 Stat. 781; Public Law 86–705), provides that the right to cancel or forfeit for violation of any of the provisions of this Act shall not apply so as to affect adversely the title or interest of a bona fide purchaser of any lease, option to acquire a lease or an interest therein, or permit which lease, interest, option, or permit was acquired and is held by a qualified person, association, or corporation in conformity with those provisions, even though the holdings of the person, association, or corporation from which the lease, interest, option, or permit was acquired, or of his predecessor in title (including the original lessee of the United States) may have been cancelled or forfeited or may be or may have been subject to cancellation or forfeiture for any such violation.

(b) If in any proceeding to cancel or forfeit a lease, interest in a lease, option to acquire a lease or an interest therein, or a permit acquired in violation of any of the provisions of this Act, an underlying lease, interest, option, or permit is cancelled or forfeited to the Government and there are valid interests therein or valid options to acquire the lease or an interest therein which are not subject to cancellation, forfeiture, or compulsory disposition, such underlying lease interest, option, or permit shall be sold to the highest responsible, qualified bidder by competitive bidding in a manner similar to that provided for in the offering of leases by competitive bidding subject to all outstanding valid interests therein and valid options pertaining thereto. However, if less than the whole interest in the lease, interest, option, or permit is cancelled or forfeited, such partial interest shall likewise be sold in similar manner. If no satisfactory offer is obtained as a result of the competitive offering of such whole or partial interests, such interests may be sold by such other methods as the authorized officer deems appropriate, but on terms not less favorable to the Government than those of the best competitive bid received.

(c) The commencement and conclusion of all such proceedings shall be noted promptly upon the serial register relating to the particular lease or option or other interest involved.

(d) Effective as of September 21, 1959, any party to any proceedings with respect to a violation of any provision of the Act, whether initiated prior or subsequent to that date, has the right to be dismissed promptly as such a party by showing that he holds and acquired the interest involving him as a bona fide purchaser without having violated any provisions of the Act. No hearing shall be necessary upon such showing unless prima facie evidence is presented to indicate a possible violation on the part of the alleged bona fide purchaser.

(e) If during an such proceeding a party thereto files a waiver of his rights under his lease to drill or to assign his interest thereto, or if such rights are suspended by order of the Secretary pending a decision, payment of rentals and the running of time against the term of the lease or leases involved shall be suspended as of the first day of the month following the filing of the waiver or the Secretary's suspension until the first day of the month following the final decision in the proceeding or the revocation of the waiver for suspension.

§ 3104.3 Limitation on time to institute suit to contest a Secretary's decision.

No action contesting a decision of the Secretary involving any oil and gas lease shall be maintained unless such action is commenced or taken within 90 days after the final decision of the Secretary relating to such matter.

Subpart 3105—Helium

§ 3105.1 Recovery.

The ownership of and the right to extract helium from all gas produced from lands leased or otherwise disposed of under the act have been reserved to the United States. Appropriate provision is made in leases with respect to the recovery of helium.

Subpart 3106—Bonds

§ 3106.1 Bonds with individual sureties.

Where surety bonds are tendered with individuals as sureties they must be executed by not less than two qualified individual sureties to cover compliance with all terms and conditions of the lease or permit or the applicable law or regulations. Each surety must execute a statement showing that he is worth in real property not exempt from execution, double the sum specified in the undertaking, over and above his just debts and liabilities and that he is either a resident of the same State and the United States Judicial District as the principal on the bond, or of the State and the Judicial District in which the lands involved are located. There also must be furnished a certificate by a judge or clerk of a court of record, a United States attorney, a United States Commissioner, or a United States postmaster, as to the identity, signature, and financial competency of the sureties. All bonds furnished with individual sureties will be examined every two years, or at any other time when found advisable, and the principal on the bond will be required to furnish new statements of justification by the sureties and a new certificate of financial competency, and if such sureties are unable to qualify additional security will be required. The statement of justification required to be furnished by the sureties, and the certificate of competency should be on a form approved by the Director.

PART 3120—OIL AND GAS

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Subpart 3129—Termination

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AUTHORITY: The provisions of this Part 3120 issued under sec. 32, 41 Stat. 450; 30 U.S.C. 189.

Subpart 3120—Oil and Gas; General

§ 3120.1 General provisions.

§ 3120.1–1 Applicability of amendatory act to existing leases.

Prior to the filing of the notice of election hereinafter referred to, the act of August 8, 1946 (60 Stat. 950; 30 U.S.C. 181) applies to leases issued prior to the date of that act only where the amendatory act so

provides. The owner of any lease issued prior to August 8, 1946, may elect pursuant to section 15 to come entirely under the provisions of that act by filing a notice of election to have his lease governed by the amendatory act, accompanied by the consent of the surety if there is a bond covering the lease. A notice of election so filed shall constitute an amendment of all provisions of the lease to conform with the provisions of the amendatory act and the regulations issued hereunder.

§ 3120.1–2 Acreage limitations.

(a) No person, association, or corporation shall take hold, own, or control at one time oil and gas leases (including options for such leases or interests therein) whether directly through ownership of leases or interests in leases and applications, or offers therefor or indirectly as a member of an association or associations or as a stockholder of a corporation or corporations, holding leases or interests therein and applications or offers therefor for more than 246,080 acres in any one State, of which no more than 200,000 acres may be held under option, except that in the State of Alaska the acreage limitation is 300,000 acres in the northern leasing district and 300,000 acres in the southern leasing district, of which no more than 200,000 acres may be held under option in each of the two leasing districts.

(1) The boundary between the two leasing districts in the State of Alaska is the left limit of the Tanana River from the boundary between the United States and Canada to the confluence of the Tanana River and Yukon River and the left limit of the Yukon River from said confluence to its principal southern mouth.

(2) Leases or offers or applications for leases committed to any unit or cooperative plan approved or prescribed by the Secretary of the Interior shall not be included in computing accountable acreage. Leases or offers or applications for leases subject to an operating, drilling or development contract approved by the Secretary of the Interior pursuant to section 17(j) of the act, other than communization agreements, shall be excepted in determining the accountable acreage of the lessees or operators.

(3) Where, as the result of the termination or contraction of a unit or cooperative plan, or the elimination of a lease from operating, drilling, or development plan, a party holds or controls excess accountable acreage, such party shall have 90 days from such termination or contraction or elimination in which to reduce his holdings to the prescribed limitation and to file proof of such reduction in the proper land office.

(b) In computing acreage holdings or control, the accountable acreage of a party owning an undivided interest in a lease shall be such party's proportionate part of the total lease acreage. Likewise, the accountable acreage of a party owning an interest in a corporation or association shall be his proportionate part of the corporation's or association's accountable acreage except that no person shall be charged with his pro rata share of any acreage holdings of any association or corporation unless he is the beneficial owner of more than ten per centum of the stock or other instruments of ownership or control of such association or corporation. An option held by a corporation or an association on September 2, 1960, shall not, for a period of 3 years, be charged to any stockholder of the corporation or member of the association so long as it is so held. Parties owning a royalty or other interest determined by or payable out of a percentage of production from a lease will be charged with a similar percentage of the total lease acreage.

(c) No lease will be issued and no transfer or operating agreement will be approved until it has been shown that the offeror, transferee, or operator is entitled to hold the acreage or obtain the operating rights.

(d) At any time upon request by the authorized officer of the Bureau of Land Management, the record title holder of any lease or a lease operator or a lease offeror or the holder of any lease option may be required to file in the appropriate land office a statement, showing as of a specified date the serial number and the date of each lease of which he is the record holder, or under which he holds operating rights, or for which he holds an option, and each application or offer for lease held or filed by him in the particular State setting forth the acreage covered thereby, and the nature, extent and acreage interest, including royalty interests held by him in any oil and gas

lease of which the reporting party is not the lessee of record, whether by corporate stock ownership, interest in unincorporated associations and partnerships, or in any other manner.

(e) (1) If any person holding or controlling only leases or interests in leases or options or interests in options is found to hold accountable acreage in violation of the provisions of this section and of the act, the last lease or leases or interest or interests acquired by him which with the options or interests in options created the excess acreage holdings shall be cancelled or forfeited in their entirety, even though only part of the acreage in the lease or interest constitutes excess holdings, unless it can be shown to the satisfaction of the Director of the Bureau of Land Management that the holding or control of the excess acreage is not the result of negligence or willful intent in which event the lease or leases shall be cancelled only to the extent of the excess acreage.

(2) If any person holding or controlling leases or interests in leases only, or applications or offers for leases only, or both leases or interests in leases and applications or offers or options or interests in options below the acreage limitation provided in this section, files an application or offer, or a group of applications or offers (filed simultaneously), or options or interests in options or group thereof which causes him to exceed the acreage limitation, the application or offer, or group of applications or offers, causing the excess holding, will be rejected in its entirety.

(3) If any person holding or controlling both leases or interests in leases and applications or offers for leases, or options or interests in options or only applications or offers for leases below the acreage limitation provided in this section, acquires a lease or leases, or an option or options or interests therein; which cause him to exceed the acreage limitation, his most recently filed application or offer for lease or applications or offers for lease then containing acreage in excess of the limitation provided in this section will be rejected in its or their entirety. For the purpose of this subparagraph, time of filing shall be determined by the time of filing marked on the application or offer or, if the same time is marked on two or more applications or offers, by the serial number of the applications or offers.

(4) The provisions of this paragraph shall not limit any action which the Department may take with respect to excess acreage holdings in cases not otherwise covered by this paragraph.

§ 3120.1–3 Options.

(a) No option to acquire any interests in an oil and gas lease shall be enforceable if entered into for a period of more than three years (inclusive of any renewal period, if provided for in the option) without the prior approval of the Secretary. The acreage to which the option is applicable shall be charged both to the optionor and to the optionee, but the charge to the optionor shall cease when the option is exercised. If the option covers only a part of the optionor's interest in the acreage included in a lease, the acreage to which the option is applicable shall be fully charged to the optionor, and a share thereof shall also be charged to the optionee as his interest may appear. Upon the exercise of the option, the acreage shall be charged to the parties pro rata as their interests may appear. An unexercised option remains charged during its term until notice of its relinquishment or surrender has been filed in the appropriate land office.

(1) No option or renewal thereof executed after September, 1960, shall be enforceable until notice thereof has been filed in the appropriate land office. No such notice shall be required for options or renewals executed prior to September 2, 1960. Each such notice shall include (i) the names and addresses of the parties thereto; (ii) the serial number of the lease or application for lease to which the option is applicable; (iii) a statement of the number of acres covered thereby and of the interests and obligations of the parties thereto; and (iv) the interest to be conveyed and retained on exercise of the option. Such notice shall be subscribed by all parties to the option or their duly authorized agents. The filing of an executed copy of the option containing the above information shall satisfy the foregoing requirement. In addition, the notice of option must contain or be accompanied by a signed statement, by the holder of the option, that he is the sole party in interest in the option; if not, he shall

set forth the names and nature and extent of the interest therein of the other interested parties, the nature of the agreement between them if oral, and a copy of such agreement, if written.

(b) An option hereafter taken on a lease application or offer may be for the period of time until issuance of the lease and three years thereafter. Where it is sought to obtain options for periods in excess of those provided in the preceding sentence, an application should be filed with the authorized officer of the Bureau of Land Management, accompanied by a complete showing as to the special or unusual circumstances which are believed to justify approval of the application.

(c) Within the meaning of this section, options may be taken only on lands embraced in leases and offers or applications for leases and the acreage included in any such option taken upon an application or offer for a lease shall be chargeable from and after the date of such option.

(d) It shall be permissible for any such option to provide that where all or any part of the land covered thereby is included in a cooperative or unit plan (as defined in § 3121.1) duly executed by the parties and submitted to the Secretary for final approval prior to the expiration of the three-year option period, then, as to that part of the land covered by said option which is included in said cooperative or unit plan, such option shall not expire until a date 30 days after the date of final approval or disapproval by the Secretary of that cooperative or unit plan.

(e) Each holder of an option must file in the appropriate land office within 90 days after June 30 and December 31 of each year duplicate statements showing as of the prior June 30 and December 31, respectively (1) his name and the name and address of each grantor of an option held by him, the serial number of every lease, application or offer for lease subject to option; (2) date and expiration date of each option; (3) number of acres covered by each option; (4) aggregate number of options held in each State, and total acreage thereof; and (5) a statement of his interest and obligation under each option; provided, that the statement of his interest and obligation with respect to any option shall not be required where such interests and obligations have been set forth in the notice required under paragraph (a) of this section and there have been no changes in such interests and obligations since such filing. Option statements covering lands in the State of California shall be filed in the land office at Sacramento, California. The failure of the holder of an option to file such statement shall render the option unenforceable by him, but this shall not diminish the acreage deemed to be held under option by the optionee in computing the amount chargeable and shall not relieve any party thereto of any liability to cancellation, forfeiture, forced disposition, or other sanction provided by law.

(f) If the statement shows or it is otherwise ascertained that the optionee holds options in excess of the prescribed limitation, he will be given 30 days within which to file proof of reduction of his option holdings to the limitations prescribed by the act.

§ 3120.2 Known geological structures and naval reserves.

§ 3120.2–1 Lands within one mile of naval petroleum or helium reserves.

No oil and gas lease will be issued for land within one mile of the exterior boundaries of a naval petroleum or a helium reserve, unless the land is being drained of its oil or gas deposits or helium content by wells on privately owned land or unless it is determined by the authorized officer, after consultation with the agency exercising jurisdiction over the reserve, that operations under such a lease will not adversely affect the reserve through drainage from known productive horizons.

§ 3120.2–2 Boundaries of known geologic structures.

(a) The Director of the Geological Survey will determine the boundaries of the known geologic structures of producing oil or gas fields, and, where necessary to effectuate the purposes of the act, the productive limits of producing oil or gas deposits as such limits existed on August 8, 1946.

(b) Determinations of "structures defined" will be followed, as soon as practicable, by the filing in the appropriate land office of maps or diagrams showing the structure boundaries, and by publication in the FEDERAL REGISTER of notices that the determinations have

been made. Because determinations of "structures undefined" are usually of a more temporary nature, maps or diagrams thereof will not be filed and notices thereof will not be published; however, a memorandum of each such determination will be filed in the appropriate land office and will be available for public inspection. Additional information concerning the procedures used in making the determinations may be obtained from the Geological Survey, Washington 25, D.C.

(c) In accordance with long-standing rulings of the Department, if the producing character of a structure underlying a tract of land is actually known prior to the date of the Department's official pronouncement on that subject, it is the date of the ascertainment of the fact, and not the date of the pronouncement, that is determinative of rights which depend upon whether the land is or is not situated within a known geologic structure of a producing oil or gas field. Ernest A. Hanson, A–26375 (May 29, 1952), and cases cited therein. All determinations are subject to change at any time upon receipt of further information through the drilling of wells and other sources. Accordingly, lessees or applicants for leases should not rely upon the maps, diagrams, determinations or notices thereof, as currently controlling documents.

(d) Any lessee or his operator may apply to the Director of the Geological Survey for a determination whether the land in his lease is inside or outside the productive limits of a producing oil or gas deposit as such limits existed on August 8, 1946.

§ 3120.3 Drainage.

§ 3120.3–1 Compensation for drainage.

Upon a determination by the Director of the Geological Survey that lands owned by the United States are being drained of oil or gas by wells drilled on adjacent lands, the authorized officer of the Bureau of Land Management, may execute agreements with the owners of adjacent lands whereby the United States, or the United States and its lessees, shall be compensated for such drainage, such agreements to be made with the consent of any lessee affected thereby. The precise nature of any agreement will depend on the conditions and circumstances involved in the particular case.

§ 3120.3–2 Protection from drainage.

(a) Where land in any lease is being drained of its oil or gas content by a well either on a Federal lease issued at a lower rate of royalty or on land not the property of the United States, the lessee must drill and produce all wells necessary to protect the leased lands from drainage. In lieu of drilling such wells, the lessee may, with the consent of the Director of the Geological Survey, pay compensatory royalty in the amount determined in accordance with 30 CFR 221.21.

(b) The payment of compensatory royalty shall extend the primary or extended term of any lease for the period during which such compensatory royalty is paid, and for a period of one year from the discontinuance of such payment, and for so long thereafter as oil or gas is produced in paying quantities.

§ 3120.3–3 Leasing of wildlife refuge lands, game range lands and coordination lands.

(a) *Definitions*—(1) *Wildlife refuge lands.* Such lands are those embraced in a withdrawal of public domain and acquired lands of the United States for the protection of all species of wildlife within a particular area. Sole and complete jurisdiction over such lands for wildlife conservation purposes is vested in the United States Fish and Wildlife Service even though such lands may be subject to prior rights for other public purposes or, by the terms of the withdrawal order, may be subject to mineral leasing.

(2) *Game range lands.* Game ranges created by a withdrawal of public lands and reserved for dual purposes, namely protection and improvement of the public grazing lands and natural forage resources and conservation and development of natural wildlife resources, are under the joint jurisdiction of the Bureau of Land Management and the United States Fish and Wildlife Service.

(3) *Coordination lands.* These lands are withdrawn or acquired by the Government and made available to the States by cooperative agreements entered into between the United States Fish and Wildlife Service and the game commissions of the various States, in accordance with the act of March 10,

1934 (48 Stat. 401), as amended by the act of August 14, 1946 (60 Stat. 1080), or by long-term leases or agreements between the Department of Agriculture and the game commissions of the various States pursuant to the Bankhead-Jones Farm Tenant Act (50 Stat. 525), as amended, where such lands were subsequently transferred to the Department of the Interior, with the United States Fish and Wildlife Service as the custodial agency of the Government.

(4) *Alaska wildlife areas.* Such lands are areas in Alaska created by a withdrawal of public lands for the management of natural wildlife resources and administered by the United States Fish and Wildlife Service.

(b) *Leasing policy and procedure.* (1) No offers for oil and gas leases covering wildlife refuge lands will be accepted and no leases covering such lands will be issued except as provided in subparagraph (2) of this paragraph. There shall be no drilling or prospecting under any lease heretofore or hereafter issued on lands within a wildlife refuge except with the consent and approval of the Secretary of the Interior with the concurrence of the Fish and Wildlife Service as to the time, place and nature of such operations in order to give complete protection to wildlife populations and wildlife habitat on the areas leased, and all such operations shall be conducted in accordance with the stipulations in the Bureau of Land Management stipulation on a form approved by the Director.

(2) In instances where it is determined by the Geological Survey that any of the lands mentioned in paragraph (a)(1), or any of the lands mentioned in paragraph (a) (2), (3) and (4) of this section and defined in this section as not available for leasing are subject to drainage, the Bureau of Land Management, with the concurrence of the United States Fish and Wildlife Service, will process an offering inviting competitive bids in accordance with the then existing regulations relating to competitive oil and gas leasing. Such leases shall be issued only upon approval by the Secretary of the Interior and shall contain such stipulations as are necessary to assure that leasing activities and drilling shall be carried out in such a manner as will result in a minimum of damage to wildlife resources.

(3) As to game range lands and Alaska wildlife areas, representatives of the appropriate office of the Bureau of Land Management and the United States Fish and Wildlife Service will confer for the purpose of entering into an agreement specifying those lands which shall not be subject to oil and gas leasing. No such agreement shall become effective, however, until approved by the Secretary of the Interior. As to coordination lands, representatives of the Bureau of Land Management and the United States Fish and Wildlife Service will, in cooperation with the authorized members of the various State game commissions, confer for the purpose of determining by agreement those lands which shall not be subject to oil and gas leasing.

(4) The remaining lands in paragraph (a) (2) and (4) of this section not closed to oil and gas leasing will be subject to leasing on the imposition of such stipulations agreed upon by the Fish and Wildlife Service and the Bureau of Land Management. The remaining lands in paragraph (a) (3) of this section not closed to oil and gas leasing will be subject to leasing on the imposition of such stipulations agreed upon by the State Game Commission, the United States Fish and Wildlife Service, and the Bureau of Land Management.

(c) *Publication and filing of agreements; filing of lease offers.* The agreements referred to in paragraph (b) (3) of this section shall be published in the FEDERAL REGISTER and shall contain a description of the lands affected thereby which are not subject to oil and gas leasing, together with a statement of the stipulations agreed upon by the parties thereto for inclusion in such leases to assure that all operations under the lease shall be carried out in such a manner as will result in a minimum of damage to wildlife resources. The agreements, as supplemented by maps or plats specifically delineating the lands will be filed in the appropriate land offices of the Bureau of Land Management where they may be inspected by the public at the usual hours specified for that purpose. Lease offers for such lands will not be accepted for filing until the tenth day after the agreements and supplemental maps or plats are noted on the land office records.

(d) *Suspension of pending applications.* All pending offers or applications

heretofore filed for oil and gas leases covering game ranges, coordination lands, and Alaska wildlife areas, will continue to be suspended until the agreements referred to in paragraph (b) (3) of this section shall have been completed.

(e) *Lands in requested withdrawal.* All existing offers or applications for oil and gas leases covering lands included in request for withdrawals for wildlife refuges, game ranges, coordination lands or Alaska wildlife areas, as defined herein, shall be suspended until after the consummation of the withdrawal, and thereafter such offers shall be considered in accordance with the provisions of this section.

NOTE:

Stipulations. For inclusion in oil and gas leases entered into pursuant to this section relating to oil and gas leases in wildlife refuge, game range, and coordination lands.

Instructions. (1) The following stipulations will be made a part of Interior Department lease forms. These stipulations will be made applicable as terms and conditions of performance by lessees under all oil and gas leases entered into under authority vested in the Secretary of the Interior over game range, coordination or Alaska Wildlife lands pursuant to the order of the Secretary of the Interior published in 23 F.R. 227, January 11, 1958.

(2) Should compliance with one or more of these terms and conditions be considered unduly burdensome and unnecessary to the protection of wildlife resources, the lessee may request waiver thereof by letter addressed to the Secretary of the Interior setting forth, in full, the reasons why a waiver is considered necessary. The authority to grant such waivers shall be discretionary and may be exercised only by the Secretary or the Under Secretary of the Interior.

(3) The authorized officer shall (a) approve no plan of operation that contains provisions inconsistent with the stipulations hereinafter set forth; (b) waive no term or condition in a lease; or (c) exercise no discretion vested in him unless he is satisfied the exercise of that discretion will not damage any wildlife resource.

(4) Drilling and production operations under the lease shall be under the direction of the Geological Survey.

Terms and conditions. (1) as used herein:

(a) The term "lessee" includes the lessee, heirs and assigns of the lessee and persons operating on behalf of the lessee;

(b) The term "wildlife resources" includes fish and wildlife resources and concentrations, fish and wildlife management operations and range improvements and facilities;

(c) The term "authorized officer" means the State Director of the Bureau of Land Management in the State in which the land is located, and, in Alaska, the Refuge Manager of the Bureau of Sport Fisheries and Wildlife;

(2) The lessee shall:

(a) Comply with all the rules and regulations of the Secretary of the Interior:

(b) Prior to the beginning of operations, appoint and maintain at all times during the term of the lease a local agent upon whom may be served written orders or notices respecting matters contained in these stipulations and to inform the authorized officer in writing of the name and address of such agent. If a substitute agent is appointed, the lessee shall immediately inform the said representative;

(c) Conduct all authorized activities in a manner satisfactory to the authorized officer with due regard for good land management and avoid damage to improvements, timber, crops, and wildlife cover, and fill all sump holes, ditches, and other excavations or cover all debris, and so far as reasonably possible, restore the surface of the leased lands to their former condition and when required to bury all pipelines below plow depth. The authorized officer shall have the right to enter all the premises at any time to inspect both the installation and operational activities of the lessee;

(d) Take such steps as may be necessary to prevent damage to wildlife;

(e) Do all in his power to prevent and suppress forest, brush, or grass fires and to require his employees, contractors, subcontractors and employees of contractors or subcontractors to do likewise;

(f) Install adequate blow-out prevention equipment;

(g) Construct ring dikes and sump pits to confine drilling mud and other pollutants and make safe disposition of salt water by use of injection wells or such other method as may be approved in the plan of operation;

(h) Cover flare pits in acres of wildlife concentration;

(i) Remove derricks, dikes, equipment, and structures not required in producing operations within 60 days after the completion of drilling;

(j) Comply with and see to it that his agents and employees comply with all Federal, State, or territorial laws relating to hunting, fishing, and trapping;

(k) Commit the lease to any unit plan required in the interest of conservation of oil or gas resources or for the protection of wildlife;

(l) Prior to the conduct of geological, geophysical, or core drilling operations or construction of any facilities, or prior to operations to drill or produce, submit in triplicate for approval in writing by the authorized officer a plan of operation that will include detailed statements indicating the manner

in which the lessee will comply with these stipulations together with a statement that the lessee agrees that compliance with these stipulations and with the approved plan of operations are conditions of performance under this lease and that failure to comply with these provisions (unless they are waived by the Secretary or the Under Secretary of the Interior) will be grounds for cancellation of the lease by the United States. Notwithstanding other provisions in these stipulations, the lessee shall include in any plan of operation specific provisions relating to: The time, place, depth and strength of seismographic shots, maps showing the location of his leases included in the plan, actual and proposed access roads, bunkhouses, proposed well locations, storage and utility facilities, water storage, pipelines and pumping stations; the type of safety equipment that will be employed; the methods to be used to assure the disposition of drilling mud, pollutants, and other debris; the location of facilities in relation to flood levels; and such other specific matters as the authorized officer may require. The plan of operation shall be kept current in all respects and all revisions and amendments submitted to the authorized officer for written approval;

(m) Do all things reasonably necessary to prevent or reduce to the fullest extent scarring and erosion of the land, pollution of the water resources and any damage to the watershed. Where construction, operation, or maintenance of any of the facilities on or connected with this lease causes damage to the watershed or pollution of the water resource, the lessee agrees to repair such damage, including reseeding and to take such corrective measures to prevent further pollution or damage to the watershed as are deemed necessary by the authorized officer;

(n) File the bond required by section 2a (4) of the lease before conducting any operations on the leasehold, and file any additional bond required by the authorized officer to pay for damages to wildlife habitat, including trees and shrubs, or wildlife improvements:

(o) Agree to respect and comply with any new requirements imposed by the Secretary of the Interior, or the authorized officer, on the operating program as operating experience proves necessary in order to give complete protection to wildlife populations and wildlife habitat on the areas leased.

(3) The lessee shall not:

(a) Construct roads, pipelines, utility lines, and attendant facilities that are either unnecessary or which might interfere with wildlife habitat or resources or with drainage;

(b) Modify or change the character of streams, lakes, ponds, water holes, seeps, and marshes, except by advance approval in writing by the authorized officer, nor shall he in any way pollute such streams, lakes, ponds, water holes, seeps, or marshes;

(c) Conduct operations at such times as will interfere with wildlife concentrations;

(d) Conduct geological or geophysical explorations that might damage any wildlife resource and such operations shall be conducted only in accordance with advance approval in writing by the authorized officer as to the time, manner of travel and disturbances of surfaces and the facilities required for the protection of wildlife.

(e) Use explosives in fish spawning or rearing areas, nesting areas, lambing grounds, or other areas of wildlife concentration during periods of intense activity or at any other time or in any manner that might damage any wildlife resources; the pattern size, and depth of seismographic shots shall be submitted to the authorized officer for advance approval in writing and immediately following the detonation of any seismographic charge, the hole shall be filled or plugged and any surface damage repaired to the satisfaction of the authorized officer;

(f) Without advance approval in writing, use any water or water source controlled or developed by the United States;

(g) Use mobile equipment under such conditions as to permanently damage surface resources, cause scarring and erosion, or interfere with wildlife concentration;

(h) Conduct geological, or geophysical, or core drilling operations or construct roads, bunkhouses or any facilities or drill or produce under a lease until the submittal and approval in writing of a plan of operation pursuant to section (2) (m) supra or deviate therefrom until any revisions or amendments of said plan have been approved in writing by the authorized officer.

(i) Burn rubbish, trash, or other inflammable materials or use explosives in a manner or at a time that would constitute a fire hazard.

§ 3120.4 Preference right of patentee or entryman to a lease.

(a) An entryman or patentee who made entry prior to February 25, 1920, or an assignee of such entryman or a vendee of such patentee if the assignment or conveyance was made prior to January 1, 1918, for lands not withdrawn or classified or known to be valuable for oil and gas at date of entry shall be entitled, if the entry or patent is impressed with a reservation of the oil or gas, to a preference right to a lease for the land. A settler whose settlement was made prior to February 25, 1920, on land in the same status but which has since been withdrawn, classified, or is known to contain oil or gas, also has such a preference right.

(b) Any offeror for a lease to lands owned, entered or settled upon as stated above must notify the person entitled to a preference right of the filing of the offer and of the latter's preference right for 30 days after notice to apply for a lease. If the party entitled to a preference right files a proper offer within the 30-day period, he will be awarded a lease; but if he fails to do so, his rights will be considered to have terminated.

§ 3120.5 Lands in entries or claims not impressed with a reservation of oil and gas.

(a) Where an offer is filed to lease lands noncompetitively in an entry or settlement claim not impressed with an oil or gas reservation, the offer will be rejected unless it is found that the land is prospectively valuable for oil or gas. An offeror for a lease for land already embraced in a nonmineral entry without a reservation of the mineral, and likewise a nonmineral entryman or settler who is contending that the land is nonmineral in character should submit with their respective offer and application, showings of as complete and accurate geologic data as may be procurable, preferably the reports and opinions of qualified experts.

(b) Should the land be found to be prospectively valuable for oil or gas, the entryman or settler will be notified thereof and allowed a reasonable time to apply for reclassification of the land as nonmineral, submitting a showing therewith, and to apply for a hearing in the event that reclassification is denied, or to appeal. If he does neither, or he is unsuccessful, the entry or settlement rights and any patent issued pursuant thereto will be impressed with a reservation of oil and gas to the United States. In such circumstances a lease will be granted to the offeror, all else being regular, unless the entryman or settler has a preference right.

§ 3120.6 Showing required for unsurveyed lands.

Every offeror for oil and gas lease for unsurveyed lands, must state in his offer that there are no settlers upon the land, or if there be settlers, give the name and post office address of each and a description of the lands claimed, by metes and bounds and approximate legal subdivisions.

Subpart 3121—Cooperative Conservation Provisions

§ 3121.1 Cooperative or unit plans.

The act authorizes lessees and their representatives to unite with each other, or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan of development or operation of any oil or gas pool, field, or like area, or any part thereof (whether or not any part of such pool, field, or like area is then subject to any cooperative or unit plan of development or operation). The agreement must be for the purpose of more properly conserving the natural resources of any such oil or gas pool, field, or area covered thereby and must be determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest. The Secretary, with the consent of the lessees, is authorized to establish, alter, change or revoke drilling, producing, rental, minimum royalty, and royalty requirements of the leases and to make such regulations with reference to such leases as he may deem necessary or proper to secure the protection of the public interest. All leases committed to any unit or cooperative plan approved or prescribed by the Secretary of the Interior shall be excepted in determining acreage charges. For the extension of leases committed to a unit plan, see § 3127.4.

§ 3121.2 Applications for approval of plan.

The procedure in obtaining approval of a cooperative or unit plan of development including suggested text of an agreement acceptable to the Department is contained in 30 CFR Part 226, "Unit or Cooperative Agreements". All applications to unitize and all documents incident thereto shall be filed in the office of the oil and gas supervisor, Geological Survey for the region in which the unit area is situated.

§ 3121.3 Communitization or drilling agreements.

(a) The Secretary is authorized when separate tracts under lease cannot be independently developed and operated in conformity with an established well-spacing or well-development program, to approve communitization or drilling agreements for the lease or any portion

thereof with other lands, whether or not owned by the United States, when in the public interest. Operations or production pursuant to such an agreement shall be deemed to be operations or production as to each lease committed thereto.

(b) Preliminary requests to communitize separate tracts shall be filed in triplicate with the oil and gas supervisor and executed agreements shall be submitted in sufficient number to permit retention of five copies by the Department after approval.

(c) The agreement shall describe the separate tracts comprising the drilling or spacing unit, shall show the apportionment of the production or royalties to the several parties and the name of the operator, and shall contain adequate provisions for the protection of the interests of all parties, including the United States. The agreement must be signed by or in behalf of all necessary parties and will be effective only after approval by the Secretary of the Interior as provided therein.

§ 3121.4 Approval of operating, drilling, or development contracts.

(a) The authority of the Secretary to approve operating, drilling, or development contracts without regard to acreage limitations ordinarily will be exercised only to permit operators or pipeline companies to enter into contracts with a number of lessees sufficient to justify operations on a large scale for the discovery, development, production, or transportation of oil or gas and to finance the same.

(b) A contract submitted for approval under this provision should be filed with the appropriate land office manager, Bureau of Land Management, together with enough copies to permit retention of 5 copies by the Department after approval. It should be accompanied by a statement showing all the interests held by the contractor in the area or field and the proposed or agreed plan of operation or development of the field. All the contracts held by the same contractor in the area or field should be submitted for approval at the same time, and full disclosure of the project made. Complete details must be furnished in order that the Secretary may have facts upon which to make a definite determination in accordance with the provisions of the act, and prescribe the conditions on which approval of the contracts is made.

§ 3121.5 Combinations for joint operation or for transportation of oil.

Upon obtaining the approval of the Secretary, lessees may combine their interests in leases for the purpose of constructing and carrying on the business of a refinery, or of estblishing and constructing as a common carrier a pipe line or lines of railroads to be operated and used by them jointly in the transportation of oil from their several wells or from the wells of other lessees, or to increase the acreage which may be acquired or held under the provisions of section 17 of the act relating to competitive leases. An application under this section together with enough copies to permit retention of 5 copies by the Department after approval should be filed with the Director, Bureau of Land Management. The application must show a reasonable need for the combination and that it will not result in any concentration of control over the production or sale of oil and gas which would be inconsistent with the anti-monopoly provisions of the law. Rights-of-way for oil and gas pipe lines may be granted as provided for in § 2234 of this chapter.

§ 3121.6 Subsurface storage of oil or gas.

(a) In order to avoid waste or to promote conservation of natural resources, the Secretary of the Interior, upon application by the interested parties, may authorize the subsurface storage of oil or gas, whether or not produced from federally owned lands, in lands leased or subject to lease under the act. Such authorization will provide for the payment of such storage fee or rental on the stored oil or gas as may be determined adequate in each case, or, in lieu thereof, for a royalty other than that prescribed in the lease when such stored oil or gas is produced in conjunction with oil or gas not previously produced. Any lease used for the storage of oil or gas shall be extended for the period of such storage and so long thereafter as oil or gas not previously produced is produced in paying quantities.

(b) Applications for subsurface storage shall be filed in triplicate with the oil and gas supervisor and shall disclose the ownership of the lands involved, the

parties in interest, the storage fee, rental, or royalty offered to be paid for such storage and all essential information showing the necessity for such project. Enough copies of the final agreement signed by the parties in interest shall be submitted for the approval of the Secretary to permit retention of 5 copies by the Department after approval.

Subpart 3122—Issuance of Leases

§ 3122.1 Classes and term.

(a) All lands subject to disposition under the act which are known or believed to contain oil or gas may be leased by the Secretary of the Interior. When within the known geologic structure of a producing oil or gas field such land may be leased only by competitive bidding and in units of not exceeding 640 acres to the highest responsible qualified bidder at a royalty of not less than 12½ percent. Leases for not to exceed 2,560 acres, except where the rule of approximation applies, entirely within an area of six miles square or within an area not exceeding six surveyed sections in length or width measured in cardinal directions, may be issued for all other land subject to the act to the first qualified offeror at a royalty of 12½ percent.

(b) All competitive leases shall be for a primary term of five years and so long thereafter as oil or gas is produced in paying quantities and noncompetitive leases for a primary term of ten years and so long thereafter as oil or gas is produced in paying quantities.

(c) Competitive and noncompetitive oil and gas leases for lands in which the United States owns an undivided fractional oil and gas interest may be issued pursuant to the regulations in this part, subject to the provisions of this section.

(d) Rentals, minimum royalties and royalties payable for lands in which the United States owns an undivided fractional interest shall be in the same proportion to the rentals, minimum royalties and royalties provided in §§ 3125.1, 3125.2 and 3125.3, respectively, of this part, as the undivided fractional interest of the United States in the oil and gas underlying the leased lands is to the full mineral interest.

§ 3122.2 Dating of leases.

All competitive and noncompetitive oil and gas leases, excepting renewal leases, will be dated as of the first day of the month following the date the leases are signed on behalf of the lessor except that where prior written request is made a lease may be dated the first of the month within which it is so signed.

§ 3122.3 Leases within unit areas.

(a) Before issuance of an oil and gas lease for lands within an approved unit agreement, the lease applicant or offeror or successful bidder will be required to file evidence that he has entered into an agreement with the unit operator for the development and operation of the lands in his lease under and pursuant to the terms and provisions of the approved unit agreement, or a statement giving satisfactory reasons for the failure to enter into such agreement. If such statement is acceptable, he will be permitted to operate independently but will be required to conform to the terms and provisions of the agreement with respect to such operations.

(b) In case an application or offer for a noncompetitive lease embracing lands partly within and partly without the exterior boundaries of a unitized area is found acceptable, separate leases will be issued, one embracing the lands within the unit area, and one the lands outside of such area.

§ 3122.4 Exchange and renewal leases.

§ 3122.4–1 Conditions.

Any lease which issued for a term of 20 years, or any renewal thereof, or which issued in exchange for a 20-year lease prior to August 8, 1946, may be exchanged for a new lease. Such new lease will be issued for a primary term of five years and so long thereafter as oil or gas is produced in paying quantities and will contain the rental and royalty rates prescribed in §§ 3125.1 thru 3125.3. An application to exchange a lease for a new lease should be filed in triplicate by the lessee with the manager of the appropriate land office, must show full compliance by the applicant with the terms of the lease and applicable regulations, and must be accompanied by a nonrefundable filing fee of $10.

§ 3122.4–2 Application for renewal.

(a) Twenty-year leases or renewals thereof may be renewed for successive terms of 10 years at the rental and royalty rates specified for such renewal leases in §§ 3125.1 through 3125.3. An application to renew should be filed in triplicate, in the proper office as prescribed in § 3123.1(b) at least 90 days, but not more than six months, prior to the expiration of its term, and must be accompanied by a nonrefundable filing fee of $10. Such application should be made by the record title holder or holders of the lease and may be joined in or consented to by the operator of record. The application should show whether all moneys due the United States have been paid and whether operations under the lease have been conducted in accordance with the regulations of the Department.

(b) The applicant or his operator shall furnish in triplicate with the application

for renewal, copies of all agreements not theretofore filed providing for overriding royalties or other payments out of production from the lease which will be in existence as of the date of its expiration. When such payments, including overriding royalties, are in excess of 5 percent of gross production a detailed statement of the income from and costs of operation of the lease for the twelve month period immediately preceding the month in which the application for renewal is filed must also be furnished.

§ 3122.4–3 Action on application.

(a) If the outstanding obligations in excess of five percent of gross production payable from production do not constitute a burden on the lease prejudicial to the interests of the United States, they will not be considered a bar to its renewal but any lease that may be issued will be upon the condition, to be incorporated in the lease, that if and when the cost of operations, including the payment of over-riding royalties or payments out of production, shall be determined by the authorized officer of the Bureau of Land Management to constitute such a burden such royalties and payments shall be reduced to not more than 5 percent of the value of the production. If no objection to the renewal of the lease appears, copies of a renewal lease, in triplicate, dated the first day of the month in which the original lease terminated, will be forwarded to the lessee for execution. If upon receipt of the executed lease forms and a satisfactory lease bond, the lease is executed, one copy thereof will be delivered to the lessee.

(b) If a determination is made that overriding royalties and payments out of production in excess of 5 percent of gross production constitute a burden on lease operations to the extent that proper and timely development will be retarded, or continued operation of the lease impaired, or premature abandonment of the wells caused, the lease application will be suspended and the parties in interest will be offered an opportunity to reduce the excessive overriding royalties or other payments out of production to not more than 5 percent of the value of the production. If the holders of outstanding overriding royalty or other interests payable out of production, the operator, and the lessee are unable to enter into a mutually fair and equitable agreement, any of the parties may apply for a hearing at which all interested parties may be heard and written statements presented. Thereupon a final decision will be rendered by the Department outlining the conditions acceptable to it as a basis for a fair and reasonable adjustment of the excessive overriding royalties and other payments out of production, and an opportunity will be afforded within a fixed period of time to submit proof that such adjustment has been affected. Upon failure to submit such proof within the time so fixed, the application for renewal will be denied.

§ 3122.4–4 Form of lease.

Renewal and exchange leases will be issued on a form approved by the Director. The rentals and royalties payable thereunder will be set out on such schedule as may be appropriate.

Subpart 3123—Noncompetitive Leases

§ 3123.1 Application.

(a) Except as provided in § 3123.9, to obtain a non-competitive lease an offer to accept such lease must be made on a form approved by the Director, "Offer to lease and lease for oil and gas," or on unofficial copies of that form in current use: *Provided,* That the copies are exact reproductions of one page of both sides of the official approved one page form and are without additions, omissions or other changes or advertising. The official form or a valid reproduction of the official form will also constitute the lease when signed by the Manager of the Land Office.

(b) Five copies of the official form, or valid reproduction thereof, for each offer to lease shall be filed in the proper land office, or for land deposits in States for which there are no land offices, with the Director of the Bureau of Land Management, Washington, D.C., 20240. (Offers for lands or minerals deposits in the following States should be filed at the land office named: North Dakota or South Dakota land office at Billings, Montana; Nebraska or Kansas, at Cheyenne, Wyoming; Oklahoma, at Santa Fe, New Mexico.) For the purpose of this part an offer will be considered filed when it is received in the proper office during business hours.

(c) If there is any variation in the land descriptions among the five copies

of the official forms, the copy showing the date and time of receipt in the land office will control.

(d) Each offer must be filled in by typewriter or printed plainly in ink and signed in ink by the offeror or the offeror's duly authorized attorney in fact or agent. An offer may be made by a legal guardian or trustee in his name for the benefit of a non-alien minor or minors but an offer may not be filed by a minor. An offer may not include more than 2,560 acres except where the rule of approximation applies. The lands in the offer must be entirely within an area of six miles square or within an area not exceeding six surveyed sections in length or width. No offer may be made for less than 640 acres except where the offer is accompanied by a showing that the lands are in an approved unit or cooperative plan of operation or such a plan which has been approved as to form by the Director of the Geological Survey, or where the land is surrounded by lands not available for leasing under the act.

§ 3123.2 What should accompany offer.

Each offer, when first filed, shall be accompanied by:

(a) A filing fee of $10 which will be retained as a service charge, even though the offer should be rejected or withdrawn in whole or in part.

(b) Full payment of the first year's rental based on the total acreage if known, and if not known, on the basis of 40 acres for each smallest legal subdivision.

(c) (1) Except in a case where an officer of a corporation signs an offer on behalf of the corporation (as to which see paragraph (g) of this section), evidence of the authority of the attorney-in-fact or agent to sign the offer and lease, if the offer is signed by such attorney or agent on behalf of the offeror. Where such evidence has previously been filed in the same land office where the offer is filed, a reference to the serial number of the record in which it has been filed, together with a statement by the attorney-in-fact or agent that such authority is still in effect will be accepted.

(2) A statement over the offeror's signature setting forth whether the offeror's direct and indirect interests in oil and gas leases, applications, and offers therefor and options exceed 246,080 acres in the same State of which no more than 200,000 acres are under option, or exceed 300,000 acres in each of the northern and southern leasing districts of Alaska, of which no more than 200,000 acres are held under option in each of said leasing districts and in addition, if the offeror is an individual, a statement of his citizenship.

(3) A signed statement by the offeror that he is the sole party in interest in the offer and the lease, if issued; if not he shall set forth the names of the other interested parties. If there are other parties interested in the offer a separate statement must be signed by them and by the offeror, setting forth the nature and extent of the interest of each in the offer, the nature of the agreement between them if oral, and a copy of such agreement if written. Such separate statement and written agreement, if any, must be filed not later than 15 days after the filing of the lease offer. All interested parties must furnish evidence of their qualifications to hold such lease interest.

(d) (1) If the offer is signed by an attorney in fact or agent, it shall be accompanied by separate statements over the signatures of the attorney in fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney in fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one. The statement must be accompanied by a copy of any such written agreement or understanding. If such an agreement or understanding exists, the statement of the attorney in fact or agent should set forth the citizenship of the attorney in fact or agent or other person and whether his direct and indirect interests in oil and gas leases, applications, and offers including options for such leases or interests therein exceed 246,080 acres in any one State, of which no more than 200,000 acres may be held under option, or exceeds the permissible acreage in Alaska as set forth in § 3120.1–2. The statement by the principal (offeror) may be filed within 15 days after the filing of the offer. This requirement does not apply in cases in which the attorney in fact or agent is a member of an unincorporated association (including a partnership), or is an officer of a corporation and has an interest in the offer or the lease to be issued solely by reason of the fact that he is a member of the association or a stockholder in the corporation.

(2) If the power of attorney specifically limits the authority of the attorney in fact to file offers to lease for the sole and exclusive benefit of the principal and not in behalf of any other person in whole or in part, and grants specific authority to the attorney in fact to execute all statements of interest and of holdings in behalf of the principal and to execute all other statements required, or which may be required, by the Acts and the regulations, and the principal agrees therein to be bound by such representations of the attorney in fact and waives any and all defenses which may be available to the principal to contest,

negate or disaffirm the actions of the attorney in fact under the power of attorney, then the requirement that statements must be executed by the offeror will be dispensed with and such statements executed by the attorney in fact will be acceptable as compliance with the provisions of the regulations.

(e) If the offer is made by a guardian or trustee, a certified copy of the court order authorizing him to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; his statements as to the citizenship and holdings of each of the minors; and a similar statement as to his own citizenship and holdings under the leasing act, including his holdings for the benefit of other minors.

(1) Where evidence of the authority to act of a guardian, trustee, an executor or administrator, or where articles of association, including partnership agreements, have previously been filed pursuant to regulations in this section, a reference by serial number to the record in which such evidence has previously been filed, together with a statement as to any amendments thereof will be accepted.

(f) If the offer is made by an association (including a partnership), it must be accompanied by a certified copy of the articles of association and the same showing as to the citizenship and holdings of its members as required of an individual.

(g) If the offeror is a corporation, the offer must be accompanied by a statement showing (1) the State in which it is incorporated, (2) that it is authorized to hold oil and gas leases and that the officer executing the lease is authorized to act on behalf of the corporation in such matters, (3) the percentage of voting stock and of all the stock owned by aliens or those having addresses outside of the United States, and (4) the names and addresses of the stockholders holding more than 10 percent of the stock of the corporation. Where the stock owned by aliens is over 10 percent, additional information may be required by the Bureau before the lease is issued or production is obtained. A separate statement from each stockholder owning or controlling more than 10 percent of the stock of the corporation setting forth his citizenship and holdings must also be furnished. Where such material has previously been filed a reference by serial number to the record in which it has been filed, together with a statement as to any amendments will be accepted.

(h) An offer for a fractional interest noncompetitive oil and gas lease must be filed on a form approved by the Director in accordance with § 3123.1. The offer must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States in each tract covered by the offer to lease. Ordinarily, the issuance of a noncompetitive fractional interest oil and gas lease to one who, upon such issuance, would own less than 50 percent of the operating rights in any such tract, will not be regarded as in the public interest, and an offer leading to such result will be rejected.

§ 3123.3 Rejection of offer.

(a) When any person, association, corporation, or other entity or business enterprise files an offer to lease for inclusion in a drawing, and an offer (or offers) to lease is filed for the same lands in the same drawing by any person or party acting for, on behalf of, or in collusion with the other person, association, corporation, entity or business enterprise, under any agreement, scheme, or plan which would give either, or both, a greater probability of successfully obtaining a lease, or interest therein, in any public drawing, held pursuant to § 3123.9, all offers filed by either party will be rejected. Similarly, where an agent or broker files an offer to lease for the same lands in behalf of more than one offeror under an agreement that, if a lease issues to any of such offerors, the agent or broker will participate in any proceeds derived from such lease, the agent or broker obtains thereby a greater probability of success in obtaining a share in the proceeds of the lease and all such offers filed by such agent or broker will also be rejected. Should any such offer be given a priority as a result of such a drawing, it will be similarly rejected. In the event a lease is issued on the basis of any such offer, action will be taken for the cancellation of all interests in said lease held by each person who acquired any interest therein as a result of collusive filing unless the rights of a bona fide purchaser as provided for in § 3104.2 intervene, whether the pertinent information regarding it is obtained by or was available to the Government before or after the lease was issued.

(b) Except as provided in § 3123.4 an offer which is not filed in accordance with the regulations in this part will be rejected and will afford the offeror no priority.

§ 3123.4 Curable defects.

An offer to lease containing any of the following deficiencies will be approved by the signing officer provided all other requirements are met:

(a) An offer deficient in the first year's rental by not more than 10 percent. The

additional rental must be paid within 30 days from notice under penalty of cancellation of the lease.

(b) An offer covering not more than 10 percent over the maximum allowable acreage of 2,560 acres. The lease will be approved for 2,560 acres in the discretion of the signing officer or so much over that amount as may be included under the rule of approximation.

(c) An offer completed in pencil or script.

(d) An offer on a lease form not currently in use.

(e) An offer on a form not correctly reproduced provided it contains the statement that the offeror agrees to be bound by the terms and conditions of the lease form in effect at the date of filing.

§ 3123.5 Issuance of lease; assignments and withdrawal of offer.

(a) An offer may not be withdrawn, either in whole or in part, unless the withdrawal is received by the land office before the lease, an amendment of the lease, or a separate lease, whichever covers the land described in the withdrawal, has been signed on behalf of the United States.

(b) The United States will indicate its acceptance of the lease offer, in whole or in part, and the issuance of the lease by the signature of the appropriate officer thereof in the space provided. An executed copy of the lease will be mailed to the offeror at the address of record.

(c) If any of the land described in item 2 of the offer is open to oil and gas filing when the offer is filed but is omitted from the lease for any reason and thereafter becomes available for leasing to the offeror, the original lease will be amended to include the omitted land unless, before the issuance of the amendment, the land office receives a withdrawal of the offer with respect to such land or an election to receive a separate lease in lieu of an amendment. Such election shall consist of a signed statement by the offeror asking for a separate lease accompanied by a new offer on the required form describing the remaining lands in his original offer, executed pursuant to this section. The new offer will have the same priority as the old offer. It need not be accompanied by the filing fee. The rental payment held on the original offer will be applied to the new offer. The rental and the lease term for the land added by such an amendment shall be the same as if the land had been included in the original lease when it was issued. If a separate lease is issued, it will be dated in accordance with § 3122.2.

(d) A transfer of the whole interest in all or any part of the offer may be approved as an incident to the transfer, by assignment or otherwise, of the whole interest in all or any part of the lease. A transfer of an undivided fractional interest in the whole offer may be approved as an incident to the transfer of an undivided fractional interest in the whole lease. An application for approval of a transfer of an offer must include a statement that the transferee agrees to be bound by the offer to the extent that it is transferred and must be signed by the transferee. In other instances transfers of an offer will not be approved prior to the issuance of a lease for the lands or deposits covered by the said transfers.

§ 3123.6 Death of offeror.

If an offeror dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed, and if probate has been completed, or is not required, to the heirs or devisees, provided there is filed in all cases an offer to lease in compliance with the requirements of this section which will be effective as of the effective date of the original application or lease offer filed by the deceased. If there are any minor heirs or devisees, such offer can only be made by their legal guardian or trustee in his name. Each such offer must be accompanied by the following information:

(a) Where probate of the estate has not been completed:

(1) Evidence that the person who as executor or administrator submits the offer, and bond form if a bond is required, has authority to act in that capacity and to sign the offer and bond forms.

(2) A statement over the signature of each heir or devisee, similar to that required of an offeror under § 3123.2(d) concerning citizenship and holdings.

(3) Evidence that the heirs or devisees are the heirs or devisees of the deceased offeror and are the only heirs or devisees of the deceased.

(b) Where the executor or administrator has been discharged or no probate proceedings are required:

(1) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the offeror and the provisions of the law of the deceased's last domicile showing that no probate is required.

(2) A statement over the signature of each of the heirs or devisees with reference to holdings and citizenship, similar to that required under § 3123.2(d) except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

§ 3123.7 Determination of priorities.

No lease shall be issued before final action has been taken on (a) any prior offer to lease the land, (b) any subsequent offer to lease the land that is based upon an alleged preferential right, and (c) any petition for the renewal or reinstatement of an existing or former lease on the land. If a lease is issued before final action has been taken on such an offer or petition, it shall be canceled, after due notice to the lessee, if the offeror or petitioner is found to be qualified and entitled to receive a lease on the land.

§ 3123.8 Description of lands in offer.

(a) If the lands have been surveyed under the public land rectangular system, each offer must describe the lands by legal subdivision, section, township, and range. If the lands have not been so surveyed, each offer must describe the lands by metes and bounds, giving courses and distances between the seccessive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the lands are in irregular form, and connected by courses and distances to an official corner of the public land surveys. In Alaska the description of unsurveyed lands must be connected by courses and distances to either an official corner of the public land surveys or to a triangulation station established by any agency of the United States (such as the U.S. Geological Survey, the Coast and Geodetic Survey, or the International Boundary Commission), if the record position thereof is available to the general public.

(b) In lease offers embracing unsurveyed public lands adjacent to tidal waters in southern Louisiana and in Alaska, if the offeror finds it impracticable to furnish a metes and bounds description, as required in paragraph (a) of this section with respect to the water boundary, he may, at his option, extend the boundary of his offer into the water a distance sufficient to permit complete enclosure of the water boundary of his offer by a series of courses and distances in cardinal directions (the object being to eliminate the necessity of describing the meanders of the water boundary of the public lands included in the offer). The description in the lease offer shall in all other respects conform to the requirements of paragraph (a) of this section. Such description would not be deemed for any purpose to describe the true water boundaries of the lease, such boundaries in all cases being the ordinary high water mark of the navigable waters. The land boundaries of such over-all area shall include only the public lands embraced in the offer. The offeror shall agree to pay rental on the full acreage included within the description with the understanding that rights under any lease to be issued on that offer will apply only to the areas within that description properly subject to lease under the act, but that the total area described will be considered as the lease acreage for purposes of rental payments, acreage limitations under § 3120.1–2 and the maximum or minimum area to be included in a lease pursuant to § 3123.1, The tract should be shown in outline on a current quadrangle sheet published by the United States Geological Survey or such other map as will adequately identify the lands described.

(c) When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, all offers to lease lands shown on such protracted surveys, filed on or after such effective date, must, except as provided below, include only entire sections described according to the section, township, and range shown on the approved protracted surveys.

(1) An offer may include less than an entire protracted section where only a portion of such a section is available for lease. In such case the offer must describe all the available lands by subdivisional parts in the same manner as

provided in paragraph (a) of this section for officially surveyed lands. If this is not feasible, as e.g., in the case of an irregular section, the offer must describe the entire section and contain a statement that it shall be deemed to include all of the land in the described section which is available for lease.

(d) The descriptions in leases issued pursuant to offers filed after the effective date of this section will be conformed to the subdivisions of the approved protracted surveys if and when such surveys have been adopted for the area; and the description and acreage of leases issued pursuant to offers filed after the effective date of this section will be adjusted to the official public land surveys when such surveys have been extended over the leased area.

§ 3123.9 Availability of lands.

(a) Lands in cancelled or relinquished leases or in leases which terminate by operation of law for non-payment of rental pursuant to 30 U.S.C. sec. 188, which are not withdrawn from leasing nor on a known geological structure of a producing oil and gas field shall be subject to the filing of new lease offers only after notation on the official record of the cancellation, relinquishment, or termination of such lease and only in accordance with the provisions of this section. All lands covered by leases which expire by operation of law at the end of their primary or extended terms shall likewise be subject to the filing of new lease offers only in accordance with the provisions of this section except that notation of such expiration of the leases need not be made on the official records.

(b) On the third Monday of each month, or the first working day thereafter, if the land office is not officially open on the third Monday, there will be posted on the bulletin board in each land office a list of the lands in leases which expired, were cancelled, were relinquished in whole or in part, or which terminated, together with a notice stating that such lands will become subject to the simultaneous filings of lease offers, in accordance with paragraph (c) of this section, from the time of such posting until 10 a.m. on the fifth working day thereafter. The posted list will describe the lands by leasing units identified by parcel numbers, which will be supplemented by a description of the lands in accordance with § 3123.8, i.e., by subdivision, section, township and range if the lands are surveyed or officially protracted, or if unsurveyed, by metes and bounds. The leasing units will be established to coincide to the extent possible with the lands in an expired, cancelled, relinquished or terminated lease except that where two or more such leases were contiguous and contained a total of 640 acres or less, they may be consolidated into one leasing unit.

(c) Offers to lease such designated leasing units by parcel numbers must be submitted on a form approved by the Director, "Simultaneous Oil and Gas Entry Card" signed and fully executed by the applicant or his duly authorized agent in his behalf. The entry card will constitute the applicant's offer to lease the numbered leasing unit by participating in the drawing to determine the successful drawee. By signing and submitting the entry card, the applicant agrees that he will be bound to a lease on a current form approved by the Director for the described parcel if such a lease is issued to him as a result of the drawing. Only one entry card will be drawn for each numbered leasing unit.

(1) Only one complete leasing unit, identified by parcel number, may be included in one entry card. Lands not on the posted list may not be included therein.

(2) The entry card must be accompanied by separate remittances covering the filing fee of $10 and the first year's advance rental. The advance rental must be paid by cash, money order, certified check, bank draft, or bank cashier's check. The filing fee may be paid by a similar remittance or by uncertified check.

(3) Upon determination of the successful drawee for a particular leasing unit, the first year's rental will not be returnable and will be earned and deposited in the United States Treasury upon execution of the lease in behalf of the United States. However, if an applicant withdraws his entry card prior to the drawing or if his offer to lease is rejected, the advance rental will be returned to him, and if the successful drawee is unqualified to receive the lease, the lands in the numbered leasing unit for which such entry card was submitted shall be included in a simultaneous filing

drawing procedure to be held during the next or a following month thereafter. Unsuccessful drawees will be notified accordingly by the return of their respective entry cards.

(d) If more than one offer to lease all or any part of the acreage covered by an expired, cancelled, relinquished, or terminated lease is filed during the period provided for in paragraph (b) of this section, their priorities will be determined by a public drawing.

(e) Offers to lease which cover lands not within the foregoing categories and which are received in the same mail or over the counter at the same time, will be considered as having been filed simultaneously and priority to the extent of the conflicts between them will be determined by a public drawing.

(f) If no offers to lease all or any portion of the lands in the expired, cancelled, relinquished or terminated leases are received during the period provided for in paragraph (b) of this section the lands for which no offers are received will thereafter become subject to lease in accordance with regulations in this part.

Subpart 3124—Competitive Leases

§ 3124.1 Designation and offer of lands for lease.

The lands and deposits subject to disposition under the act which are within the known geologic structure of a producing oil or gas field will be divided into leasing blocks or tracts in units of not exceeding 640 acres each, which shall be as nearly compact in form as possible, and offered for lease at a royalty and rental to be specified in the notice of sale, to the qualified person who offers the highest bonus by competitive bidding either at public auction, or by sealed bids as provided in the notice of sale.

§ 3124.2 Notice of lease offer.

Notice of the offer of lands for lease will be by publication once a week for five consecutive weeks, or for such other period as may be deemed advisable, in a newspaper of general circulation in the county in which the lands or deposits are situated, or in such other publications as the authorized officer of the Bureau of Land Management may authorize. The notice published in a newspaper of general circulation in the county will contain a statement that the successful bidder will be required, prior to the issuance of a lease to pay his proportionate share of the total cost of publication of that notice which shall be that portion of the total advertising cost that the number of parcels of land awarded to him bears to the number of parcels for which high bidders are declared. The notice will also state the time and place of sale, the manner in which bids may be submitted, the description of the lands, and the terms and conditions of the sale.

§ 3124.3 Qualifications of successful bidder.

The successful bidder at a sale by public auction must on the day of the sale, deposit with the manager of the land office or other officer conducting the sale, and each bidder, if the sale is by sealed bids, must submit with his bid the following: Certified check on a solvent bank, money order, or cash, for one-fifth of the amount bid by him and a statement over the bidder's own signature with respect to citizenship and interests held, similar to that required of an offeror under § 3123.2(c). If the successful bidder is a corporation, it must also file a statement similar to that required by § 3123.2(f).

§ 3124.4 Award of lease.

(a) Following receipt of the report of the auction, or the opening of the sealed bids, the authorized officer, subject to his right to reject any or all bids, will award the lease to the successful bidder. Notice of his action will be forthwith transmitted to the interested parties through the local office. If the lease be awarded, three copies of the lease will be sent to the successful bidder and he will be required within 30 days from receipt thereof to execute them, pay the balance of his bonus bid, the first year's rental, and file a bond as required in § 3126.1. If any bid be rejected, the deposit will be returned. If a bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under this act. If the lease awarded to the successful bidder is executed by an attorney acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the attorney to execute the lease.

(b) If two or more units are awarded to any bidder, such units, where the acreage does not exceed 640 acres, may be included in a single lease if circumstances warrant.

§ 3124.5 Form of lease.

Competitive leases will be issued on a form approved by the Director, and the rentals and royalties payable thereunder will be set forth in a schedule made a part thereof.

Subpart 3125—Rentals and Royalties

§ 3125.1 Rentals.

Rentals shall be payable in advance at the following rates:

(a) On noncompetitive leases issued on and after September 2, 1960, under section 17 of the act for lands which on the day on which the rental falls due lie wholly outside of the known geologic structure of a producing oil or gas field, or on which on the day on which the rental falls due the thirty days' notice period under paragraph (b)(1) of this section has not yet expired, an annual rental of 50 cents per acre or fraction thereof for each lease year.

(1) For the sixth and each succeeding year of a lease which issued prior to September 2, 1960, and in the State of Alaska of any lease whose initial term expired on or after July 3, 1958, rental shall be payable at the rate of 50 cents per acre or fraction thereof.

(2) For each year of the primary term of a lease which issued prior to September 2, 1960, rental shall be payable at the rate set forth in the lease.

(b) On leases wholly or partly within the known geologic structure of a producing oil gas field:

(1) If issued noncompetitively under section 17 of the act, and not committed to a cooperative or unit plan which includes a well capable of producing oil or gas and contains a general provision for allocation of production, beginning with the first lease year after the expiration of thirty days' notice to the lessee that all or part of the land is included in such a structure and for each year thereafter prior to a discovery of oil or gas on the leased lands, rental of $2 per acre or fraction thereof.

(2) If issued noncompetitively under section 17 of the act, and committed to an approved cooperative or unit plan which includes a well capable of producing oil or gas and contains a general provision for allocation of production, the rental prescribed for the respective lease years in paragraph (a) of this section shall apply to the acreage not within a participating area.

(3) If issued competitively, unless a different rate of rental is prescribed in the lease, an annual rental of $2 per acre or fraction thereof prior to a discovery on the leased lands. After a discovery, if the lease is unitized, such rental shall be payable on the nonparticipating acreage only, and royalty as provided in the lease and elsewhere in this Part shall be payable on the participating acreage.

(c) On leases issued in any other way, an annual rental of $1 per acre or fraction thereof.

(d) A lease subject to the provisions of section 31 of the act, as amended by section 1(7) of the Act of July 29, 1954 (30 U.S.C. 188) on which there is no well capable of producing oil or gas in paying quantities, shall automatically terminate by operation of law if the lessee fails to pay the full rental due on or before the anniversary date of the lease. However, if the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely. The "anniversary date" of a lease means the same day and month in succeeding years as that on which the lease first became effective. The anniversary date of a lease does not change.

(e) If on the anniversary date of the lease less than a full year remains in the lease term, the rentals due shall be in the same proportion to the annual rental as the period remaining in the lease term is to a full year. The rentals shall be prorated on a monthly basis for the full months, and on a daily basis for the fractional months remaining in the lease term. For the purpose of prorating rentals for a fractional month, each month will be deemed to consist of 30 days.

(1) If the term of a lease for which prorated rentals have been paid is further extended to or beyond the next anniversary date of the lease, rentals for the balance of the lease year shall be due and payable on the date following the

date through which the prorated rentals were paid. If the rentals are not paid for the balance of the lease year, the lease will be subject to cancellation by the Secretary after he has given notice to the lessee in accordance with section 31 of the act. However, if the anniversary date occurs before the end of the notice period, the rental for the ensuing lease year shall nevertheless be due on the anniversary date, and failure to pay the full rental for that year on or before that date shall cause the lease to terminate automatically by operation of law, without relieving the lessee of liability for rental due for the balance of the previous lease year. (30 U.S.C. 189; 41 Stat. 437.) If the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely.

§ 3125.2 Minimum royalty.

On leases issued on or after August 8, 1946, and on those issued prior thereto if the lessee files an election under section 15 of the act of August 8, 1946, a minimum ryality of $1 per acre in lieu of rental, shall be payable at the expiration of each lease year after a discovery has been made on the leased lands, commencing with the lease year, beginning on or after the date of such discovery, except that on unitized leases the minimum royalty shall be payable only on the participating acreage. If the actual royalty paid during any year aggregates less than $1 per acre the lessee must pay the difference at the expiration of the lease year.

§ 3125.3 Royalty on production.

(a) On and after August 8, 1946, the following royalty rates shall be paid on the production removed or sold from leases:

(1) 12½ percent royalty on noncompetitive leases issued under section 17 of the act: *Provided, however,* That any holder of a lease for lands in Alaska which issued and was outstanding prior to May 3, 1958, who shall drill and make the first discovery of oil or gas in commercial quantities in any geologic structure shall pay a royalty on all production under the lease of 5 percent for 10 years following the date of such discovery and thereafter the royalty rate shall be 12½ percent. If such lease is committed to an approved unit or cooperative plan under which such a discovery is made, the 5 percent rate herein provided shall, for the purpose of computing royalty due the United States, inure to the benefit of all the land to which an allocation is made under such plan.

(2) Such rates as are prescribed in the notice of sale in the case of all leases thereafter issued by competitive bidding.

(3) 12½ percent on all leases theretofore issued, except competitive leases, and on exchange and renewal leases thereafter issued, as to production from

(i) Land determined by the Director, Geological Survey, not to be within the productive limits of any oil or gas deposit on August 8, 1946.

(ii) An oil or gas deposit which was discovered after May 27, 1941, by a well or wells drilled within the boundaries of the lease and which is determined by the Director, Geological Survey, to be a new deposit.

(iii) Or allocated to a lease pursuant to an approved unit or cooperative agreement from an oil or gas deposit which was discovered on unitized land after May 27, 1941, and determined by the Director, Geological Survey, to be a new deposit, but only if at the time of discovery the lease or, in the case of an exchange lease, the lease for which it was exchanged was committed to the agreement or was included in a duly executed and filed application for approval of the agreement.

(4) From lands within exchange and renewal leases not subject to subparagraph (3) of this paragraph the rate of royalty shall be identical to that prescribed in the prior lease, except that for a lease issued in exchange for or as a renewal of a lease carrying a flat royalty rate of 5 percent to the United States the royalty shall be as follows:

(i) When the average production of oil for the calendar month in barrels per well per day is:

Not over 110 the royalty shall be 12½%.

Over 110 but not over 130 the royalty shall be 18% of all production.

Over 130 but not over 150 the royalty shall be 19% of all production.

Over 150 but not over 200 the royalty shall be 20% of all production.

Over 200 but not over 250 the royalty shall be 21% of all production.

Over 250 but not over 300 the royalty shall be 22% of all production.

Over 300 but not over 350 the royalty shall be 23% of all production.

Over 350 but not over 400 the royalty shall be 24% of all production.

Over 400 the royalty shall be 25% of all production.

(ii) On gas, including inflammable gas, helium, carbon dioxide, and all other natural gases and mixtures thereof, and on natural or casinghead gasoline and other liquid products obtained from gas; when the average production of gas per well per day for the calendar month does not exceed 5,000,000 cubic feet, 12½ percent; and when the production of gas exceeds 5,000,000 cubic feet, 16⅔ percent of the amount or value of the gas and liquid products produced.

(5) In the case of competitive leases, and other leases theretofore issued, insofar as subparagraphs (3) and (4) of this paragraph are inapplicable, the rates specified in the lease.

(b) The average production per well per day for oil and for gas shall be determined pursuant to 30 CFR Part 221, "Oil and Gas Operating Regulations."

(c) In determining the amount or value of gas and liquid products produced, the amount or value shall be net after an allowance for the cost of manufacture. The allowance for cost of manufacture may exceed two-thirds of the amount or value of any product only on approval by the Secretary of the Interior.

(d) The Secretary of the Interior may establish reasonable values for purposes of computing royalty on any or all oil, gas, natural gasoline, and other liquid products obtained from gas, due consideration being given to the highest price paid for a part or for a majority of production of like quality in the same field, to the price received by the lessee, to posted prices and to other relevant matters. In appropriate cases this will be done after notice to the parties and opportunity to be heard.

§ 3125.4 Limitation of overriding royalties.

An agreement creating overriding royalties or payments out of the production of oil which, when added to overriding royalties or payments out of production of oil previously created and to the royalty payable to the United States, aggregate in excess of 17½ percent shall be deemed a violation of the terms of the lease unless such agreement expressly provides that the obligation to pay such excess overriding royalty or payments out of production of oil shall be suspended when the average production of oil per well per day averaged on the monthly basis is 15 barrels or less. The limitation on overriding royalties or payments out of production is not applicable to the production of gas. The limitation in this section will apply separately to any zone or portion of a lease segregated for computing Government royalty.

Subpart 3126—Bonds

§ 3126.1 Types of bonds.

(a) The successful bidder for a competitive lease prior to the issuance of the lease must furnish a corporate surety bond in the sum of at least double the amount of the $2 per acre annual rental but in no case less than $1,000 nor more than $10,000 conditioned on compliance with all the terms of the lease, and such a bond also must be filed when all or any part of the land in a lease issued noncompetitively is included within the limits of a known geologic structure of a producing oil or gas field.

(b) Until a general lease bond is filed, a noncompetitive lessee will be required prior to entry on the leased lands to furnish and maintain a bond in the penal sum of not less than $1,000 in those cases in which a bond is required by law for the protection of the owners of surface rights.

(c) All leases shall provide that where a $10,000 bond is not already being maintained a general lease bond in the penal sum of $10,000 conditioned upon compliance with all lease terms covering the entire leasehold, shall be furnished by the lessee prior to the beginning of drilling operations. An operator or, if there is more than one operator covering different portions of the lease, each operator may furnish a $10,000 general lease bond in his own name as principal on the bond in lieu of the lessee. Where there are one or more operator's bond affecting a single lease, each such bond must be conditioned upon compliance with all lease terms for the entire leasehold. Where a bond is furnished by an operator, suit may be brought thereon without joining the lessee if he is not a party to the bond. An operator's bond will not be accepted unless the operator holds an operating agreement

(b) Any other lease issued under any section of the act, committed to any such plan that contains a general provision for the allocation of oil or gas, shall continue in effect as to the land committed so long as the lease remains subject to the plan: *Provided*, That production of oil or gas is had in paying quantities under the plan prior to the expiration date of such lease, whether it be in its primary term or its extended term.

(c) Any lease committed after July 29, 1954 to such a plan, which covers lands within and lands outside the area covered by the plan, shall be segregated, as of the effective date of unitization, into separate leases; one covering the lands committeed to the plan and the other the lands not so committed. The segregated lease covering the nonunitized portion of the lands, shall continue in force and effect for the term thereof but for not less than two years from the date of segregation, and so long thereafter as oil or gas is produced in paying quantities.

§ 3127.5 Extension of lease eliminated from cooperative or unit plan or communitization or drilling agreement and of lease in effect at termination of such plan or agreement.

Any lease eliminated from any approved or prescribed cooperative or unit plan or from any communitization or drilling agreement authorized by the act, and any lease in effect at the termination of such plan or agreement, unless relinquished, shall continue in effect for the original term of the lease, or for two years after its elimination from the plan or agreement or the termination thereof, whichever is the longer, and so long thereafter as oil or gas is produced in paying quantities.

Subpart 3128—Assignments or Transfers

§ 3128.1 Assignments or transfers of leases or interests therein.

Leases may be assigned or subleased as to all or part of the leased acreage and as to either a divided or undivided interest therein to any person or persons qualified to hold a lease. The assignment or sublease must be accompanied by a signed statement by the assignee or sublessee that he is the sole party in interest in the assignment or sublease; if not, he shall set forth the names of the other interested parties. If there are other parties interested in the assignment or sublease, a separate statement must be signed by them and by the assignee or sublessee setting forth the nature and extent of the interest of each, the nature of the agreement between them, if oral, and a copy of the agreement if written. Such separate statement and written agreement, if any, must be filed not later than 15 days after the filing of the assignment or sublease. Subject to final approval by the Bureau of Land Management, assignments or subleases shall take effect as of the first day of the lease month following the date of filing in the proper land office of all the papers required by §§ 3128.2 and 3128.3. No assignment will be approved if the assignee or sublessee or any other parties in interest are not qualified to take and hold a lease or if their bond is insufficient or if they fail to file the statement required by this section. A minor, except a minor heir or devisee of a lessee, is not qualified to hold a lease and an assignment to a minor will not be approved. An assignment of a separate zone or deposit or of a part of a legal subdivision will not be approved unless the necessity therefor is established by clear and convincing evidence.

§ 3128.2 Requirements for filing of transfers.

(a) (1) Except for assignments of royalty interests all instruments of transfer of a lease or of an interest therein, including assignments of working interests, operating agreements, and subleases, must be filed for approval within 90 days from the date of final execution and, except for record title assignments, must contain all of the terms and conditions agreed upon by the parties thereto, together with similar evidence and statements as that required of an offeror under § 3123.2.

(2) To obtain approval of a transfer affecting the record title of an oil and gas lease, a request for such approval must be made, within 90 days from the date of the execution of the assignment by the parties on a form approved by the Director, or unofficial copies of that form in current use may be used for such transfers and requests for approval: *Provided*, That the unofficial copies are exact reproductions on one sheet of both

sides of the official approved one-page form, and are without additions, omissions, or other changes, except that the copies shall include the following statement above the signature of the assignee: "This form is submitted in lieu of the official form and contains all of the provisions thereof as of the date of filing of this assignment." In addition, the name and address of the printer or other party issuing unofficial reproductions of the official form shall be printed thereon. This form may be used for any assignment which affects a transfer of the record title to all or part of an oil and gas lease, but it is not to be used for any other type of transfer. The official form, or a valid reproduction of the official form, will also constitute approval of the assignment when signed by the manager of the land office.

(3) An application for approval of any instrument of transfer of a lease or interest therein or a filing of any such instrument under § 3128.6 must be accompanied by a fee of $10, and an application not accompanied by payment of such a fee will not be accepted for filing by the manager. Such fee will not be returned even though the application later be withdrawn or rejected in whole or in part.

(4) Each instrument of transfer must describe the lands involved in the same manner as described in the lease or in the manner required by § 3123.8.

(30 U.S.C. 189, 49 U.S.C. 1201)

(b) Where an attorney-in-fact or agent, in behalf of the assignor or assignee, signs the instrument of transfer or the application for approval, evidence of the authority of the attorney-in-fact or agent to sign such assignment or application must be furnished. Where such evidence has previously been filed in the same land office where the assignment is filed, a reference to the serial number of the record in which it has been filed will be accepted. In those cases where the application for approval of an assignment is signed by an attorney-in-fact or agent there must also be submitted similar statements and evidence from the principal and the agent or attorney-in-fact to that required by § 3123.2.

(c) If a bond is necessary, it must be furnished. Where an assignment does not create separate leases the assignee, if the assignment so provides, may become a joint principal on the bond with the assignor. Any assignment which does not convey the assignor's record title in all of the lands in the lease must also be accompanied by consent of his surety to remain bound under the bond of record for the lease interest retained by said assignor, if the bond, by its terms, does not contain such consent. If a party to the assignment has previously furnished a nation-wide or statewide bond no additional showing is necessary by such party as to the bond requirement. If any overriding royalty or payments out of production are created which are not shown in the instrument or agreement, a statement must be submitted describing them. If payments out of production are reserved, a statement should be submitted stating the details as to the amount, method of payment, and other pertinent terms. Assignments of record title interests must be filed in triplicate. A single copy of any additional information relating to citienship and qualifications of corporations, will be sufficient. A single executed copy of all other instruments of transfer, or of an operating agreement is sufficient.

(d) In order for the heirs or devisees of a deceased holder of a lease, an operating agreement, or a royalty interest in a producing lease, to be recognized by the Department as the holder of the lease, agreement, or interest, there must be furnished the appropriate showing required under § 3123.6.

(e) The assignor or sublessor and his surety will continue to be responsible for the performance of any obligation under the lease until the assignment or sublease is approved. If the assignment or transfer is not approved, their obligations to the United States shall continue as though no such assignment or transfer had been filed for approval. After approval the assignee or sublessee and his surety will be responsible for the performance of all lease obligations notwithstanding any terms in the assignment or sublease to the contrary.

(f) Unless the lease account is in good standing as to the area covered by the assignment when the assignment and bond are filed, or is placed in good standing before the assignment is reached for action the lease will be cancelled as provided in § 3129.2.

§ 3128.3 Separate assignments required for transfer of record titles to leases.

A separate instrument of assignment must be filed for each oil and gas lease when transfers involve record titles. When transfers to the same person, association, or corporation, involving more than one oil and gas lease are filed at the same time for approval, one request for approval and one showing as to the qualifications of the assignee will be sufficient.

§ 3128.4 Effect of assignment of particular tracts or undivided interests therein.

An assignment of a definitely described portion of the lands in a lease segregates the assigned and the retained portions into separate and distinct leases. An assignment of an undivided interest either in the entire leasehold or in any definitely described portion thereof shall not segregate or have the effect of segregating the lease into separate or distinct leases.

§ 3128.5 Extension of leases segregated by assignment.

(a) Any lease segregated by assignment, including the retained portion, shall continue in effect for the primary term of the original lease, or for two years after the date of discovery of oil or gas in paying quantities upon any other segregated portion of the original lease, whichever is the longer period.

(b) Undeveloped parts of leases retained or assigned out of leases which are in their extended term under any provision of the act shall continue in effect for two years after the effective date of assignment and so long thereafter as oil or gas is produced in paying quantities, provided the parent lease was issued prior to September 2, 1960.

(c) Undeveloped parts of leases retained or assigned out of leases which are extended by production, actual or suspended, or the payment of compensatory royalty shall continue in effect for two years after the effective date of assignment and so long thereafter as oil or gas is produced in paying quantities.

§ 3128.6 Royalty interests in oil and gas leases and assignments thereof.

Royalty interests in oil and gas leases constitute holdings or control of lands and deposits within the meaning of section 27 of the act. In order that the holdings of the assignee may be verified, all assignments of royalty interests should be filed for record purposes within 90 days from the date of execution, but no formal approval will be given. Any such assignment will be deemed to be valid provided it is accompanied by a statement over the assignee's signature that he is a citizen of the United States and that his interests in oil and gas leases do not exceed the acreage limitation as provided in § 3120.1–2 and by the statement as to overriding royalties required by § 3125.4. If any portion of this statement is found to be false the assignment shall be invalid.

Subpart 3129—Termination

§ 3129.1 Relinquishment of leases or portions thereof.

A lease or any legal subdivision thereof may be surrendered by the record title holder by filing a written relinquishment, in triplicate, in the proper land office. A relinquishment shall take effect on the date it is filed subject to the continued obligation of the lessee and his surety to make payments of all accrued rentals and royalties and to place all wells on the land to be relinquished in condition for suspension or abandonment in accordance with the regulations and the terms of the lease. A statement must be furnished that all moneys due and payable to workmen employed on the leased premises have been paid.

§ 3129.2 Cancellation and termination of lease.

(a) Any lease issued after July 29, 1954, or any lease which is extended after that date pursuant to § 3127.1 on which there is no well capable of producing oil or gas in paying quantities shall automatically terminate by operation of law if the lessee fails to pay the rental on or before the anniversary date of such lease. However, if the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely. The termination of the lease for failure to pay the rental must be noted on the official records of the appropriate Land Office. Upon such notation the lands included in such lease will become subject to the filing of new lease offers only as provided for in § 3123.9.

(b) Whenever the lessee fails otherwise to comply with any of the provisions of the act, of the regulations issued thereunder, or of the lease, such lease may be cancelled by the Secretary of the Interior if not known to contain valuable deposits of oil or gas after notice to lessee in accordance with section 31 of the act, if default continues for the period prescribed in that section after service of notice thereof. Any lessee of a lease which issued prior to July 29, 1954, may, at any time prior to the anniversary date of such lease and the accrual of rental, elect to subject his lease to the automatic termination provisions of this section by notifying, in writing, the manager of the appropriate land office to that effect.

(c) Leases known to contain valuable deposits of oil or gas may be cancelled only by judicial proceedings in the manner provided in sections 27 and 31 of the act.

This Circular replaces Circulars 2078, 2079, 2091, 2092, 2105, 2112, 2124, 2128, 2135, and 2140 and those portions of Circulars 2081 and 2085 relating to 43 CFR Part 192. Those portions of Circular 2136 relating to 43 CFR Parts 3100 and 3120 are also replaced by this Circular.

GPO 842-338

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER A—GENERAL MANAGEMENT

[Circular 2137]

PART 1840—APPEALS PROCEDURES

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AUTHORITY: The provisions of this Part 1840 issued under R.S. 2478, as amended; 43 U.S.C. 1201.

Subpart 1840—Appeals Procedures; General

§ 1840.0–3 Authority.

Sections 1840.0–3 to 1844.9 are issued under the authority of R.S. 2478, as amended; 43 U.S.C. 1201.

§ 1840.0–5 Definitions.

As used in this part:

(a) "Secretary" means the Secretary of the Interior or his authorized representatives.

(b) "Director" means the Director of the Bureau of Land Management, the Associate Director or an Assistant Director.

(c) "Bureau" means Bureau of Land Management.

(d) "Field Commissioner" includes an examiner designated to hold a hearing under Subpart 1851.

§ 1840.0–6 Documents.

(a) *Filing of documents.* A document is filed in the office where the filing is required only when the document is received in that office during the office hours when filing is permitted and the document is received by a person authorized to receive it.

(b) *Grace period for filing.* Whenever a document is required under this part to be filed within a certain time and it is not received in the proper office, as provided in paragraph (a) of this section, during that time, the delay in filing will be waived if the document is filed not later than 10 days after it was required to be filed and it is determined that the document was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed. Determinations under this paragraph shall be made by the officer before whom is pending the appeal in connection with which the document is required to be filed. This paragraph has no application to Subpart 1853 except § 1853.7 (c).

(c) *Record address.* Every person who files a document in connection with an appeal or protest shall at the time of his initial filing in the matter state his address. Thereafter he must promptly inform the office in which the filing was

made of any change in address, giving the serial or other appropriate numbers of all matters in which he has made such a filing. The successors of such person shall likewise promptly inform such office of their interest in the matters and state their addresses. If a person fails to furnish a record address as required in this section, he will not be entitled to notice in connection with the proceedings on the matter.

(d) *Transferees and encumbrancers.* Transferees and encumbrancers of land, the title to which is claimed or is in the process of acquisition under any public land law shall, upon filing notice of the transfer or encumbrance in the proper land office, become entitled to receive and be given the same notice of any appeal, or other proceeding thereafter initiated affecting such interest which is required to be given to a party to the proceeding. Every such notice of a transfer or encumbrance will be noted upon the records of the land office. Thereafter such transferee or encumbrancer must be made a party to any proceedings thereafter initiated adverse to the entry.

(e) *Service of documents.* (1) Wherever the regulations in this part require that a copy of a document be served upon a person, service may be made by delivering the copy personally to him or by sending the document by registered or certified mail, return receipt requested, to his address of record in the Bureau.

(2) In any case service may be proved by an acknowledgment of service signed by the person to be served. Personal service may be proved by a written statement of the person who made such service. Service by registered or certified mail may be proved by a post-office return receipt showing that the document was delivered at the person's record address or showing that the document could not be delivered to such person at his record address because he had moved therefrom without leaving a forwarding address or because delivery was refused at that address or because no such address exists. Proof of service of a copy of a document should be filed in the same office in which the document is filed except that proof of service of a notice of appeal should be filed in the office of the officer to whom the appeal is made, if the proof of service is filed later than the notice of appeal.

(3) A document will be considered to have been served at the time of personal service, of delivery of a registered or certified letter, or of the return by the post office of an undelivered registered or certified letter.

(4) In all cases where a party is represented by an attorney, such attorney will be recognized as fully controlling the same on behalf of his client, and service of any document relating to the proceeding upon such attorney will be deemed to be service on the party he represents. Where a party is represented by more than one attorney, service upon one of the attorneys shall be sufficient.

(f) *Computation of time for filing and service.* In computing any period of time prescribed for filing and serving a document, the day upon which the decision or document to be appealed from or answered was received or the day of any other event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, Federal legal holiday, or other non-business day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or other non-business day. When the time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, Federal legal holidays, and other non-business days shall be excluded in the computation.

(g) *Extensions of time.* (1) With the exception of the time fixed for filing a notice of appeal, the time for filing or serving any document in connection with an appeal may be extended by the officer to whom the appeal is taken.

(2) A request for an extension of time must be filed within the time allowed for the filing or serving of the document and must be filed in the same office in which the document in connection with which the extension is requested must be filed.

§ 1840.0–7 Summary dismissal.

An appeal to the Director or to the Secretary will be subject to summary dismissal by the officer to whom it is made for any of the following causes:

(a) If a statement of the reasons for the appeal is not included in the notice of appeal and is not filed within the time required;

(b) If the notice of appeal is not served upon adverse parties within the time required; and

(c) If the statement of reasons, if not contained in the notice of appeal, is not served upon adverse parties within the time required.

§ 1840.0–8 Basis of decision.

(a) Where a hearing has been held in a contest the record made shall be the sole basis for decision on appeal except to the extent that official notice may be taken of a fact as provided in § 1850.0–8 (b).

(b) No decision on appeal shall be based upon any record, statement, file or similar document which is not open to inspection by the parties to the appeal.

§ 1840.0–9 General provisions.

(a) *Effect of decision pending appeal.* Normally a decision will not be effective during the time in which a person adversely affected may file a notice of appeal, and the timely filing of a notice of appeal will suspend the effect of the decision appealed from pending the decision on appeal. However, when the public interest requires, the officer to whom an appeal may be or is taken may provide that a decision or any part of it shall be in full force and effect immediately.

(b) *Regulations governing practice before the Department.* Every individual who wishes to practice before the Department of the Interior, including the Bureau, must comply with the requirements of Part 1 of this title.

(c) *Inquiries.* No person other than officers or employees of the Department of the Interior shall direct any inquiry to any employee of the Bureau with respect to any matter pending before it other than to the head of the unit in which the matter is pending, to a superior officer, or to an employee of the unit authorized by the unit head to answer inquiries.

(d) *Power of Secretary.* Nothing in this part shall be construed to deprive the Secretary of any power conferred upon him by law.

Subpart 1842—Appeals to the Director of the Bureau of Land Management

§ 1842.2 Who may appeal.

Except as otherwise provided in Subpart 2411 of this chapter, any party to a case who is adversely affected by a decision of an officer of the Bureau of Land Management other than the Director or person signing for the Director, shall have a right of appeal to the Director.

§ 1842.4 Appeal; how taken, filing fee, mandatory time limit.

(a) A person who wishes to appeal to the Director must file in the office of the officer who made the decision (not the office of the Director) a notice that he wishes to appeal. The notice of appeal must give the serial number or other identification of the case and must be transmitted in time to be filed in the office where it is required to be filed within 30 days after the person taking the appeal is served with the decision he is appealing from. The notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make. This paragraph does not apply to grazing appeals filed pursuant to § 1853.7(a).

(b) Except where an agency of the Federal Government or of a State government or political subdivision thereof or a municipal corporation is the appellant, or where a grazing appeal is taken pursuant to § 1853.7(b), a filing fee of $5 must be paid for each separate application, claim, entry, permit, lease, protest, or similar filing or interest on which the appellant is seeking favorable action. The consolidation of appeals will not relieve each appellant of paying the same filing fee that he would have to pay if he took his appeal separately. The filing fee should accompany the notice of appeal but in any event must be received in the office where the notice of appeal is required to be filed within the time allowed for filing the notice of appeal.

(c) No extension of time will be granted for filing the notice of appeal or paying the filing fee. If a notice of appeal is filed or the filing fee is paid after the grace period provided in § 1840.0–6 (a) and (b), the notice of appeal will not be considered and the case will be closed by the officer from whose decision the appeal is taken. If the notice of appeal is filed or the filing fee is paid during the grace period provided in § 1840.0–6 (a) and (b) and the delay in filing is not waived, as provided in that section, the notice of appeal will not be considered and the case will by closed by the Director.

§ 1842.5 Examination of case record.

§ 1842.5–1 Statement of reasons, written arguments, briefs.

If the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed in the office of the Director (address: Director, Bureau of Land Management, Washington, D.C., 20240) within 30 days after the notice of appeal was filed. Failure to file the statement of reasons within the time required will subject the appeal to summary dismissal as provided in § 1840.0–7, unless the delay in filing is waived as provided in § 1840.0–6 (a) and (b). In any case the appellant will be permitted to file in such office additional statements of reasons and written arguments or briefs within the 30-day period after he filed the notice of appeal.

§ 1842.5–2 Service of notice of appeal and of other documents.

The appellant must serve a copy of the notice of appeal and of any statement of reasons, written arguments or briefs on each adverse party named in the decision appealed from, in the manner prescribed in § 1840.0–6(e), not later than 15 days after filing the document. Failure to serve within the time required will subject the appeal to summary dismissal as provided in § 1840.0–7. Proof of such service as required by § 1840.0–6(e) must be filed in the office of the Director (address: Director, Bureau of Land Management, Washington, D.C., 20240) within 15 days after service unless filed with the notice of appeal.

§ 1842.5–3 Answers.

If any party served with a notice of appeal wishes to participate in the proceeding on appeal, he must file an answer within 30 days after service on him of the notice of appeal or statement of reasons where such statement was not included in the notice of appeal. If additional reasons, written arguments, or briefs are filed by the appellant, the adverse party shall have 30 days after service thereof on him within which to answer them. The answer must state the reasons why the answerer thinks the appeal should not be sustained. Answers must be filed in

the office of the Director (address: Director, Bureau of Land Management, Washington, D.C., 20240) and must be served on the appellant, in the manner prescribed in § 1840.0–6(e), not later than 15 days thereafter. Proof of such service, as required by § 1840.0–6(e), must be filed in the office of the Director (see address above) within 15 days after service. Failure to answer will not result in a default. If an answer is not filed and served within the time required, it may be disregarded in deciding the appeal, unless the delay in filing is waived as provided in § 1840.0–6 (a) and (b).

Subpart 1843—Actions by Director

§ 1843.5 Request for hearings on appeals involving questions of fact.

Either an appellant or an adverse party may, if he desires a hearing to present evidence on an issue of fact, request that the case be assigned to a Field Commissioner of the Bureau of Land Management for such a hearing. Such a request must be made in writing and filed with the Director within 30 days after answer is due and a copy of the request should be served on the opposing party in the case. The allowance of a request for hearing is within the discretion of the Director, and the Director may, on his own motion, refer any case to a Field Commissioner for a hearing on an issue of fact. If a hearing is ordered, the Director will specify the issues upon which the hearing is to be held.

§ 1843.5–1 Deposit.

If a request for a hearing is granted, a deposit of $20 toward reporters' fees will be required of the parties who made the request. Other parties who appear at the hearing will be requested to pay their share of the fees at that time.

§ 1843.6 Request for oral argument.

The Director may, in his discretion, grant an opportunity for oral argument before him or a person designated by him.

§ 1843.7 Decision by Director.

The Director will render a written decision in each case appealed to him. Such decisions will be served on all parties and shall be subject to an appeal to the Secretary as provided in Subpart 1844.

§ 1843.9 Effect of failure to appeal.

When any party fails to appeal to the Secretary from an adverse decision of the Director, that decision shall as to such party be final and will not be disturbed except for fraud or for gross irregularity.

Subpart 1844—Appeals to Secretary of the Interior

§ 1844.1 Right of appeal to the Secretary of the Interior.

Any party adversely affected may appeal to the Secretary of the Interior from a final decision of the Director, whether such final decision is on an appeal or is an original decision, except from such a decision which, prior to promulgation, has been approved by the Secretary. No appeal, however, may be taken from a decision of the Director affirming a decision of a subordinate official of the Bureau in any case where the party adversely affected shall have failed to appeal from the decision of such official.

§ 1844.2 Appeal; how taken, filing fee, mandatory time limit.

(a) A person who wishes to appeal to the Secretary must file in the office of the Director (address: Director, Bureau of Land Management, Washington, D.C., 20240) a notice that he wishes to appeal. The notice of appeal must give the serial number or other identification of the case and must be transmitted in time to be filed in the Director's office within 30 days after the person taking the appeal is served with the decision he is appealing from. The notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make.

(b) Except where an agency of the Federal Government or of a State government or political subdivision thereof or a municipal corporation is the appellant, a filing fee of $5 must be paid for each separate application, claim, entry, permit, lease, protest, or similar filing or interest on which the appellant is seeking favorable action. The consolidation of appeals will not relieve each appellant of paying the same filing fee that he would have to pay if he took his appeal separately. The filing fee should accompany the notice of appeal but in any event must be received in the Director's office within the time allowed for filing the notice of appeal.

(c) No extension of time will be granted for filing the notice of appeal or paying the filing fee. If a notice of appeal is filed or the filing fee is paid after the grace period provided in § 1840.0–6 (a) and (b), the notice of appeal will not be considered and the case will be closed by the Director. If the notice of appeal is filed or the filing fee is paid during the grace period provided in § 1840.0–6 (a) and (b) and the delay in filing is not waived, as provided in that section, the notice of appeal will not be considered and the case will be closed by the Secretary.

§ 1844.3 Statement of reasons, written arguments, briefs.

If the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed in the office of the Secretary (address: Secretary of the Interior, Washington, D.C., 20240) within 30 days after the notice of appeal was filed. Failure to file the statement of reasons within the time required will subject the appeal to summary dismissal as provided in § 1840.0–7, unless the delay in filing is waived as provided in § 1840.0–6 (a) and (b). In any case the appellant will be permitted to file in such office additional statements of reasons and written arguments or briefs within the 30-day period after he filed the notice of appeal.

§ 1844.4 Service of notice of appeal and of other documents.

The appellant must serve a copy of the notice of appeal and of any statement of reasons, written arguments or briefs on each adverse party named in the decision appealed from, in the manner prescribed in § 1840.0–6(e), not later than 15 days after filing the document. Failure to serve within the time required will subject the appeal to summary dismissal as provided in § 1840.0–7. Proof of such service as required by § 1840.0–6(e) must be filed in the office of the Secretary (address: Secretary of the Interior, Washington, D.C., 20240) within 15 days after service unless filed with the notice of appeal.

§ 1844.5 Answers.

If any party served with a notice of appeal wishes to participate in the proceeding on appeal, he must file an answer within 30 days after service on him of the notice of appeal or statement of reasons where such statement was not included in the notice of appeal. If additional reasons, written arguments, or briefs are filed by the appellant, the adverse party shall have 30 days after service thereof on him within which to answer them. The answer must state the reasons why the answerer thinks the appeal should not be sustained. Answers must be filed in the office of the Secretary (address: Secretary of the Interior, Washington, D.C., 20240) and must be served on the appellant, in the manner prescribed in § 1840.0–6(e), not later than 15 days thereafter. Proof of such service, as required by § 1840.0–6 (e), must be filed in the office of the Secretary (see address above) within 15 days after service. Failure to answer will not result in a default. If an answer is not filed and served within the time required, it may be disregarded in deciding the appeal, unless the delay in filing is waived as provided in § 1840.0–6 (a) and (b).

§ 1844.6 Oral argument.

The Secretary may in his discretion grant an opportunity for oral argument before him or a person designated by him.

§ 1844.9 Finality of decision.

No appeal will lie in the Department from a decision of the Secretary.

This Circular replaces Circulars 1999 and 2068 and that portion of Circular 2110 relating to 43 CFR Part 221.

GPO 841-599

Replaced by C-2164

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management
Department of the Interior

SUBCHAPTER A—GENERAL MANAGEMENT

[Circular 2138]

PART 1850—HEARINGS PROCEDURES

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Subpart 1850—Hearing Procedures; General

AUTHORITY: The provisions of this Subpart 1850 issued under R.S. 2478, as amended; 43 U.S.C. 1201.

§ 1850.0–3 Authority.

(a) Sections 1850.0–3 to 1852.3–9 are issued under the authority of R.S. 2478, as amended; 43 U.S.C. 1201.

(b) Sections 1853.1 to 1853.9 are issued under the authority of R.S. 2478, as amended; 43 U.S.C. 1201 and sec. 2, 48 Stat. 1270; 43 U.S.C. 315a.

(c) Sections 1855.1 to 1855.9–2 are issued under the authority of R.S. 2478, 34 Stat. 197; 43 U.S.C. 1201, 48 U.S.C. 357.

§ 1850.0–5 Definitions.

As used in this part:

(a) "Secretary" means the Secretary of the Interior or his authorized representatives.

(b) "Director" means the Director of the Bureau of Land Management, the Associate Director or an Assistant Director.

(c) "Bureau" means Bureau of Land Management.

(d) "Field Commissioner" includes an examiner designated to hold a hearing under Subpart 1851.

Reprint of regulations current as of April 27, 1964

Circular Distribution List

§ 1850.0–6 Documents.

(a) *Filing of documents.* A document is filed in the office where the filing is required only when the document is received in that office during the office hours when filing is permitted and the document is received by a person authorized to receive it.

(b) *Grace period for filing.* Whenever a document is required under this part to be filed within a certain time and it is not received in the proper office, as provided in paragraph (a) of this section, during that time, the delay in filing will be waived if the document is filed not later than 10 days after it was required to be filed and it is determined that the document was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed. Determinations under this paragraph shall be made by the officer before whom is pending the appeal or contest in connection with which the document is required to be filed. This paragraph has no application to Subpart 1853 except § 1853.7(c) and does not apply to requests for postponement of hearings under §§ 1852.3–1 and 1852.3–2 and request for relief from reporter's fees under § 1852.3–6.

(c) *Record address.* Every person who files a document in connection with a contest or protest shall at the time of his initial filing in the matter state his address. Thereafter he must promptly inform the office in which the filing was made of any change in address, giving the serial or other appropriate numbers of all matters in which he has made such a filing. The successors of such person shall likewise promptly inform such office of their interest in the matters and state their addresses. If a person fails to furnish a record address as required in this section, he will not be entitled to notice in connection with the proceedings on the matter.

(d) *Transferees and encumbrancers.* Transferees and encumbrancers of land, the title to which is claimed or is in the process of acquisition under any public land law shall, upon filing notice of the transfer or encumbrance in the proper land office, become entitled to receive and be given the same notice of any contest, appeal, or other proceeding thereafter initiated affecting such interest which is required to be given to a party to the proceeding. Every such notice of a transfer or encumbrance will be noted upon the records of the land office. Thereafter such transferee or encumbrancer must be made a party to any proceedings thereafter initiated adverse to the entry.

(e) *Service of documents.* (1) Wherever the regulations in this part require that a copy of a document be served upon a person, service may be made by delivering the copy personally to him or by sending the document by registered or certified mail, return receipt requested, to his address of record in the Bureau.

(2) In any case service may be proved by an acknowledgment of service signed by the person to be served. Personal service may be proved by a written statement of the person who made such service. Service by registered or certified mail may be proved by a post-office return receipt showing that the document was delivered at the person's record address or showing that the document could not be delivered to such person at his record address because he had moved therefrom without leaving a forwarding address or because delivery was refused at that address or because no such address exists. Proof of service of a copy of a document should be filed in the same office in which the document is filed.

(3) A document will be considered to have been served at the time of personal service, of delivery of a registered or certified letter, or of the return by the post-office of an undelivered registered or certified letter.

(4) In all cases where a party is represented by an attorney, such attorney will be recognized as fully controlling the same on behalf of his client, and service of any document relating to the proceeding upon such attorney will be deemed to be service on the party he represents. Where a party is represented by more than one attorney, service upon one of the attorneys shall be sufficient.

(f) *Computation of time for filing and service.* In computing any period of time prescribed for filing and serving a document, the day upon which the decision or document to be appealed from or answered was received or the day of any other event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it

is a Saturday, Sunday, Federal legal holiday, or other non-business day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or other non-business day. When the time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, Federal legal holidays, and other non-business days shall be excluded in the computation.

(g) *Extensions of time.* (1) The Manager or the Examiner, as the case may be, may extend the time for filing or serving any document in a contest.

(2) A request for an extension of time must be filed within the time allowed for the filing or serving of the document and must be filed in the same office in which the document in connection with which the extension is requested must be filed.

§ 1850.0–7 Subpoena power and witness provisions.

(a) *Compulsory attendance of witnesses.* The Field Commissioner or the examiner, as the case may be, is authorized to issue subpoenas directing the attendance of witnesses at hearings to be held before him or at the taking of depositions to be held before himself or other officers. The issuance of subpoenas, service, attendance fees, and similar matters shall be governed by the act of January 31, 1903 (43 U.S.C. 102–106), and 28 U.S.C. 1821. Subpoenas will be issued on a form approved by the Director.

(b) *Application for subpoena.* An application for a subpoena may be filed in the office of the Field Commissioner or the examiner before whom the hearing is to be held, in the office of the officer who made the decision appealed from, or in the office of the manager in which a complaint was filed, in which case the officer or manager will forward the application to the Field Commissioner or the examiner, as the case may be.

(c) *Fees payable to witness who testifies on request without issuance of subpoena.* Any witness who attends any hearing or the taking of any deposition at the request of any party to the controversy without having been subpoenaed to do so shall be entitled to the same mileage and attendance fees, to be paid by such party, to which he would have been entitled if he had been first duly subpoenaed as a witness on behalf of such party.

§ 1850.0–8 Basis of decision.

(a) *Record.* (1) The record of a hearing shall consist of the transcript of testimony or summary of testimony and exhibits together with all papers and requests filed in the hearing.

(2) If a hearing has been held on an appeal pursuant to instructions of the Director, this record shall be the sole basis for decision insofar as the referred issues of fact are involved except to the extent that official notice may be taken of a fact as provided in paragraph (b) of this section.

(3) Where a hearing has been held in a contest the record made shall be the sole basis for decision except to the extent that official notice may be taken of a fact as provided in paragraph (b) of this section.

(4) In any case, no decision in a contest shall be based upon any record, statement, file or similar document which is not open to inspection by the parties to the contest.

(b) *Official notice.* Official notice may be taken of the contents of the tract books, the serial registers, the approved plats of survey and other public records of the Department of the Interior and of any matter of which the courts may take judicial notice. Where a decision in a case in which a hearing has been held rests upon official notice of a material fact relating to an issue upon which the hearing was held, the decision will so state and will allow any party upon request to have an opportunity to show to the contrary. Such request must be filed and served within the time and in the manner prescribed in the decision. Where a decision or recommendation has rested upon such official notice and has afforded the parties an opportunity to show to the contrary, no further opportunity to show to the contrary will be allowed.

§ 1850.0–9 General provisions.

(a) *Regulations governing practice before the Department.* Every individual who wishes to practice before the Department of the Interior, including the Bureau, must comply with the requirements of Part 1 of this title.

(b) *Inquiries.* No person other than officers or employees of the Department

of the Interior shall direct any inquiry to any employee of the Bureau with respect to any matter pending before it other than to the head of the unit in which the matter is pending, to a superior officer, or to an employee of the unit authorized by the unit head to answer inquiries.

(c) *Power of Secretary.* Nothing in this part shall be construed to deprive the Secretary of any power conferred upon him by law.

Subpart 1851—Hearings on Appeals Involving Questions of Fact

AUTHORITY: The provisions of this Subpart 1851 issued under R.S. 2478, as amended; 43 U.S.C. 1201.

§ 1851.1 Prehearing conferences.

(a) The Field Commissioner may, in his discretion, on his own motion or motion of one of the parties or of the Bureau of Land Management, direct the parties or their representatives to appear at a specified time and place for a prehearing conference to consider: (1) The possibility of obtaining stipulations, admissions of facts and agreements to the introduction of documents, (2) the limitation of the number of expert witnesses, and (3) any other matters which may aid in the disposition of the proceedings before the Field Commissioner or before the Director.

(b) The Field Commissioner shall issue an order which recites the action taken at the conference and the agreements made as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements. Such order shall control the subsequent course of the proceeding before the Field Commissioner unless modified for good cause, by subsequent order.

§ 1851.2 Fixing of place and date for hearing; notice.

The Field Commissioner shall fix a place and date for the hearing and notify all parties and the Bureau.

§ 1851.2–1 Postponements.

(a) Postponements of hearings will not be allowed upon the request of any party or the Bureau except upon a showing of good cause and proper diligence. A request for a postponement must be served upon all parties to the proceeding and filed in the office of the Field Commissioner at least 10 days prior to the date of the hearing. In no case will a request for postponement served or filed less than 10 days in advance of the hearing or made at the hearing be granted unless the party requesting it demonstrates that an extreme emergency occurred which could not have been anticipated and which justified beyond question the granting of a postponement. In any such emergency, if time does not permit the filing of such request prior to the hearing, it may be made orally at the hearing.

(b) The request for a postponement must state in detail the reasons why a postponement is necessary. If a request is based upon the absence of witnesses, it must state what the substance of the testimony of the absent witnesses would be. No postponement will be granted if the adverse party or parties file with the Field Commissioner within 5 days after the service of the request a statement admitting that the witnesses on account of whose absence the postponement is desired would, if present, testify as stated in the request. If time does not permit the filing of such statement prior to the hearing, it may be made orally at the hearing.

(c) Only one postponement will be allowed to a party on account of the absence of witnesses unless the party requesting a further postponement shall at the time apply for an order to take the testimony of the alleged absent witness by deposition.

§ 1851.3 Authority of the Field Commissioner.

The Field Commissioner is vested with general authority to conduct the hearing in an orderly and judicial manner, including authority to subpoena witnesses and to take and cause depositions to be taken in accordance with the act of January 31, 1903 (32 Stat. 790; 43 U.S.C. 102–106), to administer oaths, to call and question witnesses, to make proposed findings of fact and to take such other actions in connection with the hearing as may be prescribed by the Director in referring the case for hearing. The issuance of subpoenas, the attendance of witnesses, and the taking of depositions shall be governed by § 1850.0–7.

§ 1851.4 Conduct of hearing.

So far as not inconsistent with the prehearing order, the Field Commissioner may seek to obtain stipulations as to material facts. Unless the Field Commissioner directs otherwise, the appellant will present his evidence on the facts at issue following which the other parties and the Bureau of Land Management will present their evidence on such issues.

§ 1851.5 Evidence.

(a) All oral testimony shall be under oath and witnesses shall be subject to cross-examination. The Field Commissioner may question any witnesses. Documentary evidence may be received if pertinent to any issue. The Field Commissioner will summarily stop examination and exclude testimony which is obviously irrelevant and immaterial.

(b) Objections to evidence will be ruled upon by the Field Commissioner. Such rulings will be considered, but need not be separately ruled upon, by the Director in connection with his decision. Where a ruling of a Field Commissioner sustains an objection to the admission of evidence, the party affected may insert in the record, as a tender of proof, a summary written statement of the substance of the excluded evidence and the objecting party may then make an offer of proof in rebuttal.

§ 1851.6 Reporter's fees.

(a) Where a hearing is requested, each party and the Bureau will be required to pay the reporter's fees covering the party's or the Bureau's direct evidence and cross examination of other witnesses.

(b) Where a hearing is ordered by the Director upon his own motion, each party who prevails in the Director's decision will be required to pay the reporter's fees covering the party's direct evidence and cross examination of other witnesses. The remainder of the reporter's fees will be paid by the Government.

(c) Reporter's fees will be at rates established for the local courts or, if the reporting is done pursuant to a contract, at rates established by the contract. The Field Commissioner may require the parties to make reasonable deposits for reporter's fees from time to time in advance of taking testimony. Any part of a deposit not used will be returned to the depositor except that deposits which are required pursuant to § 1843.5–1 in advance of a hearing will not be returned if the party making the deposit does not appear at the hearing, but will be used to pay the reporter's appearance fee, if any, and the remainder will be forfeited to the United States.

§ 1851.7 Copies of transcript.

Each party must pay for any copies of the transcript obtained by him except where the reporter's fees paid enable the Bureau to furnish him with a copy of the transcript without additional cost. Unless a summary of the evidence is stipulated to, the Government will file the original copy of the transcript with the case record.

§ 1851.8 Summary of evidence.

The parties and the Bureau may, with the consent of the Field Commissioner, agree that a summary of the evidence approved by the Field Commissioner may be filed in the case in lieu of a transcript. In such case the Field Commissioner will prepare the summary or have it prepared and upon agreement of the parties make it a part of the case record. If, on appeal to the Secretary, a party wishes to utilize the transcript instead of the summary, he must furnish at his expense a copy of the transcript for the case record.

§ 1851.9 Action by Field Commissioner.

Upon completion of the hearing and the incorporation of the summary or transcript in the record, the Field Commissioner will send the record and proposed findings of fact on the issues presented at the hearing to the Director. The proposed findings of fact will not be served upon the parties; however, the parties and the Bureau may, within 15 days after the completion of the transcript or the summary of the evidence, file with the Director such briefs or statements as they may wish respecting the facts developed at the hearing. Any findings of fact made or adopted by the Director will be subject to attack in an appeal to the Secretary.

Subpart 1852—Contest and Protest Proceedings

AUTHORITY: The provisions of this Subpart 1852 issued under R.S. 2478, as amended; 43 U.S.C. 1201.

§ 1852.1 Private contests and protests.

§ 1852.1–1 By whom private contest may be initiated.

Any person who claims title to or an interest in land adverse to any other person claiming title to or an interest in such land or who seeks to acquire a preference right pursuant to the act of May 14, 1880, as amended (43 U.S.C. 185), or the act of March 3, 1891 (43 U.S.C. 329), may initiate proceedings to have the claim of title or interest adverse to his claim invalidated for any reason not shown by the records of the Bureau of Land Management. Such a proceeding will constitute a private contest and will be governed by the regulations in the subpart.

§ 1852.1–2 Protests.

Where the elements of a contest are not present, any objection raised by any person to any action proposed to be taken in any proceeding before the Bureau will be deemed to be a protest and such action thereon will be taken as is deemed to be appropriate in the circumstances.

§ 1852.1–3 Initiation of contest.

Any person desiring to initiate a private contest must file a complaint in the land office which has jurisdiction over the land involved, or, if there is no such land office, in the Office of the Director, Bureau of Land Management, Washington, D.C., 20240. The contestant must serve a copy of the complaint on the contestee not later than 30 days after filing the complaint and must file proof of such service, as required by § 1850.0–6(e), in the office where the complaint was filed within 30 days after service.

§ 1852.1–4 Complaints.

(a) *Contents of complaint.* The complaint shall contain the following information, under oath:

(1) The name and address of each party interested, including the age of each heir of any deceased entryman.

(2) A legal description of the land involved.

(3) A reference, so far as known to the contestant, to any proceedings pending for the acquisition of title to, or an interest in, such land.

(4) A statement in clear and concise language of the facts constituting the grounds of contest.

(5) A statement of the law under which contestant claims or intends to acquire title to, or an interest in, the land and of the facts showing that he is qualified to do so.

(6) A statement that the proceeding is not collusive or speculative but is instituted and will be diligently pursued in good faith.

(7) A request that the contestant be allowed to prove his allegations and that the adverse interest be invalidated.

(8) The office in which the complaint is filed and the address to which papers shall be sent for service on the contestant.

(9) A notice that unless the contestee files an answer to the complaint in such office within 30 days after service of the notice, the allegations of the complaint will be taken as confessed.

(b) *Amendment of complaint.* Except insofar as the Manager, Examiner, Director or Secretary may raise issues in connection with deciding a contest, issues not raised in a complaint may not be raised later by the contestant unless the examiner permits the complaint to be amended after due notice to the other parties and an opportunity to object.

(c) *Corroboration required.* All allegations of fact in the complaint which are not matters of official record or capable of being judicially noticed and which, if proved, would invalidate the adverse interest must be corroborated under oath by the statement of witnesses. Each such allegation of fact must be corroborated by the statement of at least one witness having personal knowledge of the alleged fact and such fact must be set forth in the statement. All statements by witnesses shall be attached to the complaint.

(d) *Filing fee.* Each complaint must be accompanied by a filing fee of $10 and a deposit of $20 toward reporter's fees. Any complaint which is not accompanied by the required fee and deposit will not be accepted for filing.

§ 1852.1–5 Service.

The complaint must be served upon every contestee. If the contestee is of record in the land office, service may be made and proved as provided in § 1850.0–6(e). If the person to be served is not of record in the land office, proof of service may be shown by a written statement of the person who made personal

service, by post-office return receipt showing personal delivery, or by an acknowledgment of service. In certain circumstances, service may be made by publication as provided in § 1852.5(b)(1). When the contest is against the heirs of a deceased entryman, the notice shall be served on each heir. If the person to be personally served is an infant or a person who has been legally adjudged of unsound mind, service of notice shall be made by delivering a copy of the notice to the legal guardian or committee, if there be one, of such infant or person of unsound mind; if there be none, then by delivering a copy of the notice to the person having the infant or person of unsound mind in charge.

(a) *Summary dismissal; waiver of defect in service.* If a complaint when filed does not meet all the requirements of §§ 1852.1–4 (a) and (c), or if the complaint is not served upon each contestee as required by this section, the complaint will be summarily dismissed by the manager and no answer need be filed. However, where prior to the summary dismissal of a complaint a contestee answers without questioning the service or proof of service of the complaint, any defect in service will be deemed waived.

(b) *Service by publication*—(1) *When service may be made by publication.* When the contestant has made diligent search and inquiry to locate the contestee, and cannot locate him, the contestant may proceed with service by publication after first filing with the Manager an affidavit which shall:

(i) State that the contestee could not be located after diligent search and inquiry made within 15 days prior to the filing of the affidavit;

(ii) Be corroborated by the affidavits of two persons who live in the vicinity of the land which state that they have no knowledge of the contestee's whereabouts or which give his last known address;

(iii) State the last known address of the contestee; and

(iv) State in detail the efforts and inquiries made to locate the party sought to be served.

(2) *Contents of published notice.* The published notice must give the names of the parties to the contest, legal description of the land involved, the substance of the charges contained in the complaint, the office in which the contest is pending, and a statement that upon failure to file an answer in such office within 30 days after the completion of publication of such notice, the allegations of the complaint will be taken as confessed. The published notice shall also contain a statement of the dates of publication.

(3) *Publication, mailing and posting of notice.* (i) Notice by publication shall be made by publishing notice at least once a week for five successive weeks in some newspaper of general circulation in the county in which the land in contest lies.

(ii) Within 15 days after the first publication of a notice, the contestant shall send a copy of the notice and the complaint by registered or certified mail, return receipt requested, to the contestee at his last known address and also to the contestee in care of the post office nearest the land. The return receipts shall be filed in the office in which the contest is pending.

(iii) A copy of the notice as published shall be posted in the office where the contest is pending and also in a conspicuous place upon the land involved. Such postings shall be made within 15 days after the first publication of the notice.

(c) *Proof of service.* (1) Proof of publication of the notice shall be made by filing in the office where the contest is pending a copy of the notice as published and the affidavit of the publisher or foreman of the newspaper publishing the same showing the publication of the notice in accordance with § 1852.1–5(b)(3).

(2) Proof of posting of the notice shall be by affidavit of the person who posted the notice on the land and by the certificate of the Manager or the Director as to posting in his office.

(3) Proof of the mailing of notice shall be by affidavit of the person who mailed the notice to which shall be attached the return receipt.

§ 1852.1–6 Answer to complaint.

Within 30 days after service of the complaint or after the last publication of the notice, the contestee must file in the office where the contest is pending an answer specifically meeting and responding to the allegations of the complaint, together with proof of service of a copy of the answer upon a contestant as provided in § 1852.1–5(b)(3). The answer shall contain or be accompanied

by the address to which all notices or other papers shall be sent for service upon contestee.

§ 1852.1–7 Action by Manager.

(a) If an answer is not filed as required, the allegations of the complaint will be taken as admitted by the contestee and the Manager will decided the case without a hearing.

(b) If an answer is filed and unless all parties waive a hearing, the Manager will refer the case to an examiner upon determining that the elements of a private contest appear to have been established.

§ 1852.1–8 Amendment of answer.

At the hearing, any allegation not denied by the answer will be considered admitted. The examiner may permit the answer to be amended after due notice to other parties and an opportunity to object.

§ 1852.2 Government contests.

§ 1852.2–1 How initiated.

The Government may initiate contests for any cause affecting the legality or validity of any entry or settlement or mining claim.

§ 1852.2–2 Proceedings in Government contests.

The proceedings in Government contests shall be governed by the rules relating to proceedings in private contests with the following exceptions:

(a) No corroboration shall be required of a Government complaint and the complaint need not be under oath.

(b) No filing fee or deposit toward reporter's fee shall be required of the Government.

(c) Any action required of the contestant may be taken by any authorized Government employee.

(d) The statements required by § 1852.1–4(a) (5) and (6) need not be included in the complaint.

(e) No posting of notice of publication on the land in issue shall be required of the Government.

(f) Where service is by publication, the affidavits required by § 1852.1–5(b) (1) need not be filed. The contestant shall file with the Manager a statement of diligent search which shall state that the contestee could not be located after diligent search and inquiry, the last known address of the contestee and the detail of efforts and inquiries made to locate the party sought to be served. The diligent search shall be concluded not more than 15 days prior to filing of the statement.

(g) In lieu of the requirements of § 1852.1–5(b) (3) (ii) the contestant shall, as part of the diligent search before the publication or within 15 days after the first publication send a copy of the complaint by Certified Mail, return receipt requested, to the contestee at the last address of record. The return receipts shall be filed in the office in which the contest is pending.

(h) The affidavit required by § 1852.1–5(b) (3) (iii) need not be filed.

§ 1852.3 Proceedings before the examiner.

§ 1852.3–1 Prehearing conferences.

(a) The Examiner may in his discretion, on his own motion or on motion of one of the parties, or of the Bureau, direct the parties or their representatives to appear at a specified time and place for a prehearing conference to consider: (1) The simplification of the issues, (2) the necessity of amendments to the pleadings, (3) the possibility of obtaining stipulations, admissions of facts and agreements to the introduction of documents, (4) the limitation of the number of expert witnesses, and (5) such other matters as may aid in the disposition of the proceedings.

(b) The Examiner shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admission or agreements. Such order shall control the subsequent course of the proceedings before the Examiner unless modified for good cause, by subsequent order.

§ 1852.3–2 Notice of hearing.

The examiner shall fix a place and date for the hearing and notify all parties and the Bureau at least 30 days in advance of the date set, unless the parties and the Bureau request or consent to an earlier date. The notice shall include (a) the time, place, and nature of the hearing, (b) the legal authority and jurisdiction under which the hearing is to be held, and (c) the matters of fact and law asserted.

§ 1852.3–3 Postponements.

(a) Postponements of hearings will not be allowed upon the request of any party or the Bureau except upon a showing of good cause and proper diligence. A request for a postponement must be served upon all parties to the proceeding and filed in the office of the Examiner at least 10 days prior to the date of the hearing. In no case will a request for postponement served or filed less than 10 days in advance of the hearing or made at the hearing be granted unless the party requesting it demonstrates that an extreme emergency occurred which could not have been anticipated and which justifies beyond question the granting of a postponement. In any such emergency, if time does not permit the filing of such request prior to the hearing, it may be made orally at the hearing.

(b) The request for a postponement must state in detail the reasons why a postponement is necessary. If a request is based upon the absence of witnesses, it must state what the substance of the testimony of the absent witnesses would be. No postponement will be granted if the adverse party or parties file with the Examiner within 5 days after the service of the request a statement admitting that the witnesses on account of whose absence the postponement is desired would, if present, testify as stated in the request. If time does not permit the filing of such statement prior to the hearing, it may be made orally at the hearing.

(c) Only one postponement will be allowed to a party on account of the absence of witnesses unless the party requesting a further postponement shall at the time apply for an order to take the testimony of the alleged absent witness by deposition.

§ 1852.3–4 Authority of Examiner.

The Examiner is vested with general authority to conduct the hearing in an orderly and judicial manner, including authority to subpoena witnesses and to take and cause depositions to be taken in accordance with the act of January 31, 1903 (43 U.S.C. 102–106), to administer oaths, to call and question witnesses, and to make a decision. The issuance of subpoenas, the attendance of witnesses and the taking of depositions shall be governed by § 1850.0–7.

§ 1852.3–5 Conduct of hearing.

So far as not inconsistent with a prehearing order, the Examiner may seek to obtain stipulations as to material facts and the issues involved and may state any other issues on which he may wish to have evidence presented. He may exclude irrelevant issues. The contestant will then present his case following which the other parties (and in private contests the Bureau, if it intervenes) will present their cases.

§ 1852.3–6 Evidence.

(a) All oral testimony shall be under oath and witnesses shall be subject to cross examination. The Examiner may question any witness. Documentary evidence may be received if pertinent to any issue. The Examiner will summarily stop examination and exclude testimony which is obviously irrelevant and immaterial.

(b) Objections to evidence will be ruled upon by the Examiner. Such rulings will be considered, but need not be separately ruled upon, by the Director in connection with his decision. Where a ruling of an Examiner sustains an objection to the admission of evidence, the party affected may insert in the record, as a tender of proof, a summary written statement of the substance of the excluded evidence, and the objecting party may then make an offer of proof in rebuttal.

§ 1852.3–7 Reporter's fees; transcript.

(a) Each party and the Bureau will be required to pay the reporter's fees covering the party's or the Bureau's direct evidence and cross-examination of other witnesses except that

(1) In the case of a private contest, if the ultimate decision is adverse to the contestant, he must in addition pay all the reporter's fees otherwise payable by the contestee.

(2) In the case of a Government contest, if the ultimate decision is adverse to the Government, the Bureau must pay all the reporter's fees otherwise payable by the contestee.

(3) In the case of a Government contest the contestee may be relieved of paying his share of the reporter's fees if he is financially unable to pay his share. In order to secure such relief he must file with the Examiner at least 15 days prior to the date set for the hearing a request

for such relief, supported by an affidavit setting forth in detail facts showing his financial inability to pay. If the Examiner in his discretion determines that the applicant for relief is financially unable to pay his share of the reporter's fees, the Bureau will bear the cost of such share.

(b) Except where a party is relieved of paying the reporter's fees pursuant to subparagraph (3) of paragraph (a) of this section, each party shall be required by the examiner to make reasonable deposits for reporter's fees from time to time in advance of taking testimony. Such deposits must be sufficient to cover all reporter's fees for which the party may ultimately be liable under paragraph (a) of this section. Any part of a deposit not used will be returned to the depositor upon the final determination of the case except that deposits which are required to be made when a complaint is filed will not be returned if the party making the deposit does not appear at the hearing, but will be used to pay the reporter's appearance fee, if any, and the remainder will be forfeited to the United States. Reporter's fees will be at the rates established for the local courts, or, if the reporting is done pursuant to a contract, at rates established by the contract.

(c) Each party must pay for any copies of the transcript obtained by him except where the reporter's fees paid enable the Bureau to furnish him with a copy of the transcript without additional cost.

§ 1852.3–8 Findings and conclusions; decision by hearing examiner; submission to Director for decision.

(a) At the conclusion of the testimony the parties at the hearing shall be given a reasonable time by the examiner, considering the number and complexity of the issues and the amount of testimony, to submit to the examiner proposed findings of fact and conclusions of law and reasons in support thereof or to stipulate to a waiver of such findings and conclusions.

(b) As promptly as possible after the time allowed for presenting proposed findings and conclusions, the examiner shall make findings of fact and conclusions of law (unless waiver has been stipulated), giving the reasons therefor, upon all the material issues of fact, law, or discretion presented on the record. The examiner may adopt the findings of fact and conclusions of law proposed by one or more of the parties if they are correct. He must rule upon each proposed finding and conclusion submitted by the parties and such ruling shall be shown in the record. The examiner will render a written decision in the case which shall become a part of the record and shall include a statement of his findings and conclusions, as well as the reasons or basis therefor, and his rulings upon the findings and conclusions proposed by the parties if such rulings do not appear elsewhere in the record. A copy of the decision will be served upon all parties to the case.

(c) The Director may require, in any designated case, that the examiner make only a recommended decision and that the decision and the record be submitted to the Director for consideration. The recommended decision shall meet all the requirements for a decision set forth in paragraph (b) of this section. The Director shall then make the initial decision in the case. This decision shall include such additional findings and conclusions as do not appear in the recommended decision and the record shall include such rulings on proposed findings and conclusions submitted by the parties as have not been made by the examiner.

§ 1852.3–9 Appeal to Director.

Any party, including the Government, adversely affected by the decision of the examiner may appeal to the Director as provided in Part 1840. No further hearing will be allowed in connection with the appeal to the Director but the Director, after considering the evidence, may remand any case for further hearing if he considers such action necessary to develop the facts.

Subpart—1853 Grazing Proceedings

AUTHORITY: The provisions of this Subpart 1853 issued under sec. 2, 48 Stat. 1270, 43 U.S.C. 315a.

§ 1853.1 Appeal to hearing examiner; motion to dismiss.

(a) Any applicant whose interest is adversely affected by a final decision of the district manager may appeal to an examiner by filing his appeal in the office of the district manager within 30 days after receipt of the decision. The appeal

shall state the reasons, clearly and concisely, why the appellant thinks the decision of the district manager is in error. All grounds of error not stated will be considered as waived, and no such waived ground of error may be presented at the hearing unless ordered or permitted by the examiner.

(b) Any applicant for a grazing license or permit or any other person who, after proper notification, fails to protest or appeal a decision of the district manager within the period prescribed in the decision, shall be barred thereafter from challenging the matters adjudicated in such final decision.

(c) When separate appeals are filed and the issue or issues involved are common to two or more appeals, they may be consolidated for purposes of hearing and decision.

(d) The district manager will promptly forward the appeal to the State Director. Within thirty days after his receipt of the appeal the State Director may file on behalf of the district manager a written motion, serving a copy thereof upon the appellant, requesting that the appeal be dismissed for the reason that it is frivolous, the appeal was filed late, the errors are not clearly and concisely stated, the issues are immaterial, the issue or issues were included in a prior final decision from which no timely appeal was made, or all issues involved therein have been previously adjudicated in an appeal involving the same privileges, the same parties or their predecessors in interest. The appellant may file a written answer within twenty days after service of the motion upon him. The appeal, motion, the proofs of service, and the answers will be transmitted to the examiner, who shall rule on the motion, and, if the motion is sustained, dismiss the appeal by written order.

§ 1853.2 Time and place of hearing; notice; intervenors.

At least thirty days before the date set the district manager will notify the appellant of the time and place of the hearing within or near the district. Any other person who in the opinion of the district manager may be directly affected by the decision on appeal will also be notified of the hearing; such person may himself appear at the hearing, or by attorney, and upon a proper showing of interest, may be recognized by the examiner as an intervenor in the appeal.

§ 1853.3 Authority of examiner.

(a) The examiner is vested with the duty and general authority to conduct the hearing in an orderly, impartial and judicial manner, including authority to subpoena witnesses, recognize intervenors, administer oaths and affirmations, call and question witnesses, regulate the course and order of the hearing, rule upon offers of proof and the relevancy of evidence, and to make findings of fact, conclusions of law, and a decision. The examiner shall have authority to take or to cause depositions to be taken. Subpoenas, depositions, the attendance of witnesses, and witness and deposition fees shall be governed by § 1850.0–7, to the extent such regulation is applicable.

(b) The examiner also may grant or order continuances, and set the times and places of further hearings. Continuances shall be granted in accordance with § 1852.3–3, and when the ends of justice will be served thereby. Continuances will not be granted unless they are clearly justified and timely request has been made. Where it appears prior to the date of hearing that a continuance will be desired, the party desiring the continuance should promptly file a request for continuance with the examiner, along with proof of service of the request on the district manager and on other parties. The district manager and other parties shall have five days from receipt of the request to file objection to the continuance. The examiner will then rule on the request, and, if granted, set a new date for the hearing. The district manager will notify all interested persons of the new date.

§ 1853.4 Service.

Service of notice or other documents required under this subpart shall be governed by § 1850.0–6(e). Proof of such service shall be filed in the same office where the notice or document was filed within fifteeen days after such service, unless filed with the notice or document.

§ 1853.5 Conduct of hearing.

(a) The appellant, the State director or his representative, and recognized intervenors will stipulate so far as possible all material facts and the issue or issues

involved. The examiner will state any other issues on which he may wish to have evidence presented. Issues which appear to the examiner to be unnecessary to a proper disposition of the case will be excluded; but the party asserting such issue may state briefly for the record the substance of the proof which otherwise would have been offered in support of the issue. Issues not covered by the appellant's specifications of error may not be admitted except with the consent of the State director or his representative, unless the examiner rules that such issue is essential to the controversy and should be admitted. The parties will then be given an opportunity to submit offers of settlement and proposals of adjustment for the consideration of the examiner and of the other parties.

(b) Unless the examiner orders otherwise, the State director or his representative will then make the opening statement, setting forth the facts leading to the appeal (or issuance of the show cause order where that is involved). Upon the conclusion of the opening statement, the appellant shall present his case, consistent with his specifications of error. Following the appellant's presentation, or upon his failure to make such presentation, the examiner, upon his own motion or upon motion of any of the parties, may order summary dismissal of the appeal with prejudice because of the inadequacy or insufficiency of the appellant's case, to be followed by a written order setting forth the reasons for the dismissal and taking such other action under this subpart as may be proper and warranted. An appeal may be had from such order as well as from any other final determination made by the examiner.

(c) In the absence or upon denial of such motion the State Director or his representative and recognized intervenors may present evidence if such a presentation appears to the examiner to be necessary for a proper disposition of the matters in controversy, adhering as closely as possible to the issues raised by the appellant. All oral testimony shall be under oath or affirmation, and witnesses will be subject to cross-examination by any party to the proceeding. The examiner will himself question any witness whenever it appears necessary. Documentary evidence will be received by the examiner and made a part of the record, if pertinent to any issue, or may be entered by stipulation. No exception need be stated or noted and every ruling of the examiner will be subject to review on appeal. The party affected by an adverse ruling sustaining an objection to the admission of evidence, may insert in the record, as a tender of proof, a brief written statement of the substance of the excluded evidence; and the opposing party may then make an offer of proof in rebuttal. The examiner will summarily stop examination and exclude testimony on any issue which he determines has been adjudicated previously in an appeal involving the same privileges and the same parties or their predecessors in interest, or which is obviously irrelevant and immaterial to the issues in the case. At the conclusion of the testimony the parties at the hearing shall be given a reasonable opportunity, considering the number and complexity of the issues and the amount of testimony, to submit to the examiner proposed findings of fact and conclusions of law, and reasons in support thereof, or to stipulate to a waiver of such findings and conclusions.

§ 1853.6 Findings of fact and decision by examiner; notice; submission to Director for decision.

(a) As promptly as possible after the time allowed for presenting proposed findings and conclusions, the examiner will make findings of fact and conclusions of law unless waiver has been stipulated, and will render a decision upon all material issues of fact and law presented on the record. In doing so he may adopt the findings of fact and conclusions of law proposed by one or more of the parties if they are correct. He must rule upon each such proposed finding and conclusion. The reasons for the findings, conclusions and decisions made shall be stated, and along with the findings, conclusions and decision, shall become a part of the record in any further appeal. A copy of the decision shall be sent by certified mail to the appellant and all intervenors, or their attorneys of record.

(b) The Director may require, in any designated case, that the examiner make only a recommended decision and that such decision and the record be submitted to the Director for consideration. In such instances the Director shall make the initial decision which shall constitute

the decision of the Bureau, without prejudice to the right of any party affected to be furnished with a copy of the transcript of testimony, as provided in the next paragraph, and to appeal to the Secretary in the manner prescribed by Subpart 1844.

§ 1853.7 Appeals to the Director and the Secretary.

(a) *Notice of appeal to the Director; furnishing copies of the transcript.* Within ten days after the receipt of the decision of the examiner any party, including the State director or his representative, desiring to appeal to the Director shall file a written notice of his intention to appeal and may request a copy of the transcript of testimony. Copies of the transcript will be furnished to the State director without charge, and to other appellants and to the intervenors, at a charge of ten cents per folio, except that upon a sufficient showing to the examiner, supported by an affidavit, that an appellant or intervenor is financially unable to pay such fee, a copy will be furnished him without charge. The examiner shall include in the record proof of delivery of the transcript showing the date of such delivery. Notice of appeal and request for a copy of the transcript shall be filed through the office of the Hearing Examiner.

(b) *Appeals to the Director.* An appeal from any decision of the examiner shall be filed in the Office of the Director, Bureau of Land Management, Department of the Interior, Washington, D.C., 20240, together with any brief in support thereof, within thirty days after date of receipt of the transcript of testimony, or, if the transcript is not requested, within thirty days after receipt of the examiner's decision. Within the same period a copy of the appeal and of any brief must be served on each party named in the examiner's decision, and upon the State Director, either personally or by certified mail. Any party, including the State Director, opposing the appeal will be allowed twenty days from date of receipt of the copy of the appeal and brief within which to file in the Office of the Director a reply brief, a copy of which must be served on the appellant(s) in the same manner and the same period. The appeal in other respects shall be made in accordance with Part 1840, except that no filing fee is required.

(c) *Appeals to the Secretary of the Interior.* An appeal from the decision of the Director may be made to the Secretary of the Interior in accordance with Subpart 1844.

§ 1853.8 Effect of decision suspended during appeal.

(a) An appeal shall suspend the effect of the decision from which it is taken pending final action on the appeal. Where the appeal is concerned with the grazing privileges to be granted under the current application, an appellant who was granted grazing privileges in the preceding year may continue to use such privileges pending final action on the appeal, unless the decision appealed from is made immediately effective, as herein next provided.

(b) When the orderly administration of the range or other public interest so requires, (1) the district manager may provide initially in his decision that it shall be in full force and effect pending decision on an appeal therefrom; (2) the examiner or the Director may provide in the decision on an appeal before such officer, that it shall be in full force and effect pending decision on any further appeal; (3) the Director or the Secretary may provide by interim order that any decision from which an appeal is taken shall be in full force and effect pending final decision on the appeal. Any action taken by the district manager pursuant to a decision shall be subject to modification or revocation by the Examiner, Director, or the Secretary upon an appeal from the decision. In order to insure the exhaustion of administrative remedies before resort to court action, no decision which at the time of its rendition is subject to appeal to a superior authority in the Department shall be considered final so as to be agency action subject to judicial review under section 10(c) of the Administrative Procedure Act of June 11, 1946 (60 Stat. 237), unless it has been made effective pending a decision on appeal in the manner provided in this paragraph.

§ 1853.9 Conditions of decision action.

(a) *Record as Basis of decision; definition of record.* No decision shall be rendered except on consideration of the whole record or such portions thereof as may be cited by any party or by the

State Director and as supported by and in accordance with the reliable, probative and substantial evidence. The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding shall constitute the exclusive record for decision.

(b) *Effect of substantial compliance.* No adjudication of grazing privileges will be set aside on appeal, if it appears that it is reasonable and that it represents a substantial compliance with the provisions of Part 4110 of this chapter.

Subpart 1855—Hearings Upon Possessory Claims to Lands and Waters Used and Occupied by Natives of Alaska

AUTHORITY: The provisions of this Subpart 1855 issued under R.S. 2478, 34 Stat. 197; 43 U.S.C. 1201, 48 U.S.C. 357.

§ 1855.1 Petitions of native groups.

Petitions of native groups of Alaska concerning possessory claims to lands and waters based upon any of the foregoing statutes or upon use or occupancy maintained from aboriginal times to the present day, but not evidenced by formal patent, deed or Executive order, shall be filed with the Secretary of the Interior on or before December 31, 1952. No petition filed thereafter will be considered by the Department. A copy of any such petition shall be forthwith transmitted to the Commissioner of Indian Affairs and the Director of the Bureau of Land Management for preliminary investigations and reports, and such reports shall be made a part of the record at the hearing.

§ 1855.2 Hearing and notice.

The Secretary of the Interior or such other presiding officer as may be designated by the Secretary of the Interior shall hold public hearings upon the possessory claims of native groups of Alaska. The Secretary will give notice of the hearings by publication of the time, place, and subject matter of the hearing in the FEDERAL REGISTER. The Secretary will also cause a copy of the said notice to be mailed to the last known address of all parties who are shown by the preliminary investigations to have interests in the area concerned which may be adversely affected by the claims asserted. The hearing may be continued from time to time and adjourned to a later date or a different place without notice other than the announcement thereof by the presiding officer at the hearing.

§ 1855.3 Powers of presiding officer.

(a) The hearing shall be conducted in an informal but an orderly manner in accordance with the rules of practice hereinafter set forth. Matters of procedure not covered by this section shall be determined by the presiding officer. He shall have power to: (1) Administer oaths; (2) rule upon motions and requests; (3) examine witnesses and receive evidence; (4) admit or exclude evidence and rule upon objections; (5) hear oral arguments and receive memoranda on facts and law in his discretion; (6) do all acts and take all measures necessary for the maintenance of order at the hearing and the official conduct of the proceeding.

(b) At any stage of the hearing, the presiding officer may call for further evidence upon any matter. In the event that the hearing shall be reopened for the purpose of receiving further evidence, due and reasonable notice of the time and place for the taking of evidence shall be published in the FEDERAL REGISTER and sent to all parties who appeared at the hearing.

(c) The presiding officer may take official notice of any generally recognized fact, any established technical or scientific fact, or any official public records.

§ 1855.4 Appearances.

Any interested person including any agency of the Department or other governmental agency shall be given an opportunity to appear either in person or through authorized counsel or other representation and to be heard with respect to matters relevant and material to the proceeding. Each such person or representative shall be required to inform the presiding officer of his name and address, the names, addresses and occupations of persons, if any, whom he represents and the position he takes with respect to the issues of the hearing. Where a person appears through counsel or representation, such counsel or representative shall before proceeding to testify, or otherwise to participate in the hearing, state for the record his authority to act as such counsel or representative.

§ 1855.5 Evidence.

(a) The evidence of the witnesses shall be given under oath. Witnesses may be questioned by the presiding officer or by any person who has entered an appearance for the purpose of assisting the presiding officer in ascertaining the material facts with respect to the subject matter of the hearing.

(b) The evidence, including affidavits, records, documents and exhibits received at the hearing, shall be reported and a transcript thereof shall be made. In the discretion of the presiding officer, written evidence may be received without being read into the record. Every party shall be afforded adequate opportunity to cross-examine, rebut or offer contravening evidence. Evidence shall be received with respect to the matters specified in the notice of the hearing in such order as the presiding officer shall announce.

§ 1855.5–1 Rules of evidence.

All evidence having reasonable probative value shall be admitted, regardless of common law or statutory rules of evidence, but immaterial, irrelevant or unduly repetitious evidence shall be excluded.

§ 1855.5–2 Opinion evidence.

In the discretion of the presiding officer, opinion evidence by properly qualified witnesses may be admitted.

§ 1855.5–3 Stipulations.

In the discretion of the presiding officer, stipulations of facts signed by the parties or their representatives may be introduced.

§ 1855.5–4 Depositions.

The presiding officer may order evidence to be taken by deposition at any stage of the proceeding before any person designated by him and having the power to administer oaths or affirmations. Unless notice be waived no deposition shall be taken except after reasonable notice to the parties. Any person desiring to take a deposition of a witness shall make application in writing setting out the reasons why such deposition should be taken and stating the time when, the place where, and the name and address of the person before whom it is desired the deposition should be taken, the name and address of the witness and the subject matter concerning which the witness is expected to testify. If good reason be shown, the presiding officer will make and serve upon the parties or their attorneys an order naming the witness whose deposition is to be taken and specifying the time when, the place where, and the person before whom the witness is to testify. These may or may not be the same as those named in the application. The deponent shall be subject to cross-examination by all the parties appearing. In lieu of oral cross-examination, parties may transmit written cross-interrogations to the deponent. The testimony of the witness shall be reduced to writing by the officer before whom the deposition is taken, or under his direction, after which the deposition shall be subscribed by the witness and certified in the usual form by the officer. Such deposition, unless otherwise ordered by the presiding officer for good cause shown, shall be filed in the record in the proceeding and a copy thereof supplied to the party upon whose application said deposition was taken or his attorney.

§ 1855.5–5 Objections.

It shall not be necessary to make formal exceptions to adverse rulings of the presiding officer upon objections.

§ 1855.6 Oral arguments and briefs.

(a) Oral arguments may be permitted in the discretion of the presiding officer. Such arguments shall be made a part of the transcript, if the presiding officer so orders.

(b) Briefs and proposed findings of fact and conclusions of law may not be filed after 30 days from the close of the hearing unless otherwise ordered by the presiding officer.

§ 1855.7 Filing the record of the hearing.

As soon as practicable after the close of the hearing the complete record shall be filed with the presiding officer. It shall consist of the transcript of the testimony and include exhibits and any written arguments that may have been filed. This record shall be the sole official record. No free copies of the record will be available in any proceeding under this section.

§ 1855.8 Determination by the Secretary of the Interior.

§ 1855.8–1 Report of findings and conclusions by presiding officer.

Within a reasonable time of the filing of the record of the hearing, the presiding officer shall file with the Secretary of the Interior a report upon the possessory claims of the petitioner which shall contain findings of fact and conclusions of law with respect to such claims. Unless final authority has been delegated by the Secretary to the presiding officer, the Secretary of the Interior will approve, disapprove or modify the findings and conclusions of the presiding officer. The determinations finally made shall be published in the FEDERAL REGISTER and a copy thereof shall be mailed to each party who appeared at the hearing or who received actual written notice of the hearing.

§ 1855.8–2 Rehearing.

Upon good cause shown within 30 days of the publication of the presiding officer's report, the Secretary in his discretion may order a rehearing.

§ 1855.9 Publication and revision.

§ 1855.9–1 Public notice of regulations.

Public notice of the issuance of the foregoing rules of practice for hearings shall be given by publishing the same in the FEDERAL REGISTER.

§ 1855.9–2 Revision of subpart.

This subpart may be revised by the Secretary of the Interior at any time without prior notice and such revision shall be published in the FEDERAL REGISTER.

This Circular replaces Circulars 1999 and 2068 and that portion of Circular 2110 relating to 43 CFR Part 221.

GPO 841-600

Repl. by C-2258

Circular 2139

REGULATIONS FOR OIL AND GAS LEASING -ON- FEDERAL PUBLIC LANDS

PARTS 3000, 3100, and 3120, TITLE 43,
CODE of FEDERAL REGULATIONS

DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

April 27, 1964

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER C—MINERALS MANAGEMENT

Group 3000—Minerals Management; General

PART 3000—INTRODUCTION

PART 3100—PUBLIC DOMAIN LEASING UNDER 1920 ACT

PART 3120—OIL AND GAS

PART 3000—INTRODUCTION

Subpart 3001—Introduction; General

Sec.

3001.0–5 Definitions
3001.0–6 Place of filing
3001.0–7 False statements
3001.0–8 Appeals and contests

AUTHORITY: The provisions of this Part 3000 issued under R.S. 2478; 43 U.S.C. 1201.

§ 3001.0–5 Definitions.

(a) *Secretary.* The Secretary of the Interior or any person duly authorized to exercise the powers vested in that officer.

(b) *Director.* The Director of the Bureau of Land Management or any person duly authorized to exercise the powers vested in that officer.

(c) *State Director or appropriate State Director.* The director of a Bureau of Land Management State office.

(d) *Land office or appropriate land office.* The land office of the Bureau of Land Management for the State or part of a State in which the lands covered by a permit, lease, application or entry, or application for such, are situated.

(e) *Manager or land office manager.* The manager in charge of a land office.

(f) *Mining supervisor.* The Regional Mining Supervisor of the Geological Survey for the region in which the lands under permit or lease are situated.

§ 3001.0–6 Place of filing.

Documents must be filed in the land office having jurisdiction over the selected lands, or in the Bureau of Land Management, Washington, D.C., 20240 when there is no district land office within the State, except applications for lands in North or South Dakota shall be filed in the land office at Billings, Montana, applications for lands in Nebraska and Kansas in the land office at Cheyenne, Wyoming, and for lands in Oklahoma in the land office at Santa Fe, New Mexico.

§ 3001.0–7 False statements.

18 U.S.C. 1001 makes it a crime for any person knowingly and wilfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statements as to any matter within its jurisdiction.

§ 3001.0–8 Appeals and contests.

Any person adversely affected by any official action or decision of any subordinate official may appeal therefrom to the Director and from the Director's decision to the Secretary. All appeals shall be governed by the rules of practice in Parts 1840 and 1850 of this chapter. Nothing in this group shall be construed to prevent any interested party from seeking judicial review as authorized by law.

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER C—MINERALS MANAGEMENT

[Circular 2136]

PART 3100—PUBLIC DOMAIN LEASING UNDER 1920 ACT

PART 3120—OIL AND GAS

PART 3100—PUBLIC DOMAIN LEASING UNDER 1920 ACT

Subpart 3100—Public Domain Leasing Under 1920 Act; General

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3100.0–5 Definitions.
3100.1 Lands to which leasing act does not apply.
3100.2 Survey for leasing.
3100.3 Multiple development.

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Subpart 3104—Applicants and Holders

3104.1 Simultaneous applications or offers for lease.
3104.2 Bona fide purchasers.
3104.3 Limitation on time to institute suit to contest a Secretary's decision.

Subpart 3105—Helium

3105.1 Recovery.

Subpart 3106—Bonds

3106.1 Bonds with individual sureties.

AUTHORITY: The provisions of this Part 3100 issued under sec. 32, 41 Stat. 450, sec. 1, 44 Stat. 301, as amended; 30 U.S.C. 189, 271. Interpret or apply sec. 5, 44 Stat. 1058 as amended; 30 U.S.C. 285.

Subpart 3100—Public Domain Leasing Under 1920 Act; General

§ 3100.0–2 Objectives of the leasing act.

The act of February 25, 1920 (41 Stat. 437; 30 U.S.C., 181 et seq.), as amended and supplemented, including the amendatory act of August 8, 1946 (60 Stat. 950; 30 U.S.C., sec. 181 et seq.) and the act of September 2, 1960 (74 Stat. 781; 30 U.S.C., sec. 181 et seq.), the act of February 7, 1927 (44 Stat. 1057; 30 U.S.C., 281–287) and the act of April 17, 1926 (44 Stat. 301; 30 U.S.C., 271–276) as amended, hereinafter called "the act", provide for the leasing of oil and gas, coal, potassium, sodium, phosphate, and oil shale, native asphalt, solid and semisolid bitumen, and bituminous rock including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried and lands containing such deposits owned by the United States in the public domain and deposits of sulphur and the public lands containing such deposits in the States of Louisiana and New Mexico, except as stated in § 3100.1.

§ 3100.0–5 Definitions.

(a) *Sole party in interest; statement of interest.* A sole party in interest in a lease or offer to lease is a party who is and will be vested with all legal and equitable rights under the lease. No one is, or shall be deemed to be, a sole party in interest with respect to a lease in which any other party has any of the interests described in this section. The requirement of disclosure in an offer to lease of an offeror's or other parties' interest in a lease, if issued, is predicated on the departmental policy that all offerors and other parties having an interest in simultaneously filed offers to lease shall have an equal opportunity for success in the drawings to determine priorities. Additionally, such disclosures provide

the means for maintaining adequate records of acreage holdings of all such parties where such interests constitute chargeable acreage holdings. An "interest" in the lease includes, but is not limited to, record title interests, overriding royalty interests, working interests, operating rights or options, or any agreements covering such "interests." Any claim or any prospective or future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues, or profits which may be derived from or which may accrue in any manner from the lease based upon or pursuant to any agreement or understanding existing at the time when the offer is filed, is deemed to constitute an "interest" in such lease.

§ 3100.1 Lands to which leasing act does not apply.

The mineral leasing act does not apply (a) to lands containing the mineral deposits named in § 3100.0–3 where such lands are situated in (1) national parks and monuments; (2) Indian reservations; (3) incorporated cities, towns and villages, or (4) naval petroleum and oil shale reserves; nor (b) to lands acquired under the act of March 1, 1911 (36 Stat. 961; 16 U.S.C. 513–519) known as the Appalachian Forest Reserve Act, or other acquired lands.

§ 3100.2 Survey for leasing.

Unsurveyed lands containing oil shale, and unsurveyed lands embraced in applications for lease based upon discovery of valuable deposits of potassium, sodium or sulphur under a prospecting permit, must be surveyed by the Government at the expense of the applicant prior to the issuance of a lease of the lands. To secure such a survey, the applicant must obtain from the appropriate cadastral engineer an estimate of the cost of the survey and deposit with him the estimated amount. After the survey has been accepted and the plat filed in the land office the application will be adjusted to the resulting subdivisions and the cost of the survey will be ascertained by prorating the total cost of surveying the township to the area to be leased. The amount thus ascertained will be credited to the appropriation for surveying the public lands and the balance of the deposit, if any, returned to the depositor or his authorized representative. The survey of unsurveyed lands for any coal lease, or for a competitive lease for phosphate, potassium, sodium, oil, or gas, or sulphur will be made at the expense of the Government prior to the issuance of a lease of the lands.

§ 3100.3 Multiple development.

The granting of a permit or lease for the prospecting, development, or production of deposits of any one mineral will not preclude the issuance of other permits or leases for the same land for deposits of other minerals with suitable stipulations for simultaneous operation, nor the allowance of applicable entries, locations, or selections of leased lands with a reservation of the mineral deposits to the United States.

Subpart 3101—Lessees

§ 3101.1 Who may hold leases and permits.

Mineral prospecting permits and mineral leases may be issued only to (a) citizens of the United States; (b) associations of such citizens; (c) corporations organized under the laws of the United States or of any State or Territory thereof; or (d) in the case of coal, oil, oil shale, or gas, municipalities. A mineral lease or permit will not be issued to a minor but oil and gas leases may be issued to legal guardians or trustees of minors in their behalf.

§ 3101.2 Rights of aliens.

Aliens may not acquire or hold any direct or indirect interest in permits or leases, except that they may own or control stock in corporations holding permits or leases if the laws of their country do not deny similar or like privileges to citizens of the United States. If any appreciable percentage of the stock of a corporation is held by aliens who are citizens of a country denying similar or like privileges to United States citizens, its application will be denied.

§ 3101.3 Interests held in common.

An association shall not be deemed to exist between the parties to a contract for development of leased lands, whether or not coupled with an interest in the lease, nor between co-lessees, but each party to any such contract or each co-lessee will be charged with his proportionate interest in the lease. No holding of acreage in common by the same persons in excess of the maximum acreage specified in the law for any one lessee or permittee for the particular mineral deposit so held will be permitted.

Subpart 3102—Fees and Rentals

§ 3102.1 Filing fees.

Offers for noncompetitive oil and gas leases and all applications for prospecting permits, leases or licenses, excepting licenses to relief agencies must be accompanied by a filing fee of $10 for each application or offer. Such a fee will be retained as a service charge even though the application or offer should be rejected or withdrawn in whole or in part.

§ 3102.2 Payment of rentals.

(a) Unless otherwise directed by the Secretary, rentals and royalties under all leases and permits issued under the act shall be paid to the Manager of the appropriate land office. All remittances to Bureau of Land Management offices shall be made payable to the Bureau of Land Management.

(b) All rentals and royalties on producing oil and gas leases, communitized leases in producing well units, unitized leases in producing unit areas, leases on which compensatory royalty is payable, and all payments under subsurface storage agreements and easements for directional drilling are to be paid to the Regional Oil and Gas Supervisor of the United States Geological Survey. Rentals and royalties on producing mining leases are to be paid to the Regional Mining Supervisor. All remittances to Survey offices shall be made payable to the United States Geological Survey.

§ 3102.3 Waiver, suspension, or reduction of rental or minimum royalty.

(a) In order to encourage the greatest ultimate recovery of coal, phosphate, potassium, sodium, oil shale, oil, or gas and sulphur, and in the interest of conservation, the Secretary of the Interior whenever he determines it necessary to promote development or finds that the leases cannot be successfully operated under the terms provided therein may waive, suspend, or reduce the rental or minimum royalty or reduce the royalty on an entire leasehold, or on any deposit, tract, or portion thereof segregated for royalty purposes.

(b) An application for any of the above benefits shall be filed in triplicate in the office of the oil and gas supervisor for oil and gas leases or the office of the mining supervisor for coal, phosphate, potassium, sodium, oil shale and sulphur leases. It must contain the serial number of the leases, the land office name, the name of the record title holder and operator or sublessee and the description of the lands by legal subdivision.

(1) Each application involving oil or gas shall show the number, location, and status of each well that has been drilled, a tabulated statement for each month covering a period of not less than six months prior to the date of filing the application of the aggregate amount of oil or gas subject to royalty computed in accordance with the oil and gas operating regulations, the number of wells counted as producing each month, and the average production per well per day.

(2) Each application involving coal, phosphate, potassium, sodium, oil shale and sulphur shall show the number and location of each mine, a map showing the extent of the mining operations, a tabulated statement of the minerals mined and subject to royalty for each month covering a period of not less than 12 months next prior to the date of filing of the application, and the average production per day mined for each month and complete information as to why the minimum production was not attained.

(c) Every application must contain a detailed statement of expenses and costs of operating the entire lease, the income from the sale of any leased products, and all facts tending to show whether the wells or mines can be successfully operated upon the royalty or rental fixed in the lease. Where the application is for a reduction in royalty full information shall be furnished as to whether royalties or payments out of production are paid to others than the United States, the amounts so paid and efforts made to reduce them. The applicant must also file agreements of the holders of the lease and of the royalty holders to a permanent reduction of all other royalties from the leasehold to an aggregate not in excess of one-half the Government royalties.

§ 3102.4 Suspension of operations and production.

(a) Applications by lessees for relief from the producing requirements or from all operating and producing requirements of mineral leases shall be filed in triplicate in the office of the regional oil and gas supervisor for oil and gas leases, and in the office of the regional mining supervisor for all other leases. By Departmental Order No. 2699 and Geological Survey Order No. 218 of August 11, 1952, the regional oil and gas supervisors and the regional mining supervisors are authorized to act on applications for suspension of operations or production or both filed pursuant to this section and to terminate suspensions of this kind which have been or may be granted. As to oil and gas leases, no suspension of operations and production will be granted on any lease in the absence of a well capable of production on the leasehold, except where the Secretary directs a suspension in the interest of conservation. Complete information must be furnished showing the necessity of such relief.

(b) The term of any lease will be extended by adding thereto any period of suspension of all operations and production during such term pursuant to any direction or assent of the Secretary.

(c) A suspension shall take effect as of the time specified in the direction or assent of the Secretary. Rental and minimum royalty payments will be suspended during any period of suspension of all operations and production directed or assented to by the Secretary, beginning with the first day of the lease month on which the suspension of operations and production becomes effective or, if the suspension of operations and production becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. The suspension of rental and minimum royalty payments shall end on the first day of the lease month in which operations or production is resumed. Where rentals are creditable against royalties and have been paid in advance, proper

credit will be allowed on the next rental or royalty due under the lease.

(d) No lease shall be deemed to expire by reason of a suspension of either operations or production only, pursuant to any direction or assent of the Secretary.

(e) If there is a well capable of producing on the leased premises and all operations and production are suspended pursuant to any direction or assent of the Secretary, the commencement of drilling operations only will be regarded as terminating the suspension as to operations but not as to production, and as terminating the period of suspension to be added to the term of the lease as provided in paragraph (b) of this section and the period of suspension of rental and minimum royalty payments as provided in paragraph (c) of this section. However, as provided in paragraph (d) of this section, the term of the lease will not be deemed to expire so long as the suspension of operations or production remains in effect.

(f) The minimum annual production requirements of a lease issued under the act for coal, phosphate, potassium, sodium, oil shale or sulphur shall be proportionately reduced for that portion of a lease year for which suspension of operations and production is directed or granted by the Secretary of the Interior in the interest of conservation. The relief authorized under this section may also be obtained for any oil and gas leases included within an approved unit or cooperative plan of development and operation.

§ 3102.5 Oil and gas leases involved in proceedings under the Multiple Mineral Development Act of August 13, 1954.

If any oil and gas lease issued under Section 17 of the Mineral Leasing Act, as amended (30 U.S.C. sec. 226), includes an area with respect to which a verified statement is filed by a mining claimant under section 7(c) of the Multiple Mineral Development Act of 1954 (68 Stat. 708), as amended, asserting the existence of a conflicting unpatented mining claim or claims upon which diligent work is being prosecuted the payment of rentals and the running of time under such lease shall be suspended as to the lands in conflict from the first day of the month following the filing of such verified statement until a final decision is rendered in the matter.

Subpart 3103—Reserved, Withdrawn or Segregated Lands

§ 3103.1 Reserved or segregated lands.

With respect to lands embraced in a reservation or segregated for any particular purpose the lessee shall conduct operations in conformity with such requirements as may be made by the Bureau of Land Management for the protection and use of the land for the purpose for which it was reserved or segregated, so far as may be consistent with the use of the land for the purpose of the lease, which latter shall be regarded as the dominant use unless otherwise provided or separately stipulated.

§ 3103.2 Special stipulations.

Offerors for noncompetitive oil and gas leases and applicants for permits, leases, and licenses for lands, the surface control of which is under the jurisdiction of the Department of Agriculture, will be required to consent to the inclusion therein of the stipulation on a form approved by the Director. Where the lands have been withdrawn for reclamation purposes the offeror or applicant will be required to consent to the inclusion of a stipulation on the approved forms. If the land is potentially irrigable, or if the land is within the flow limits of a reservoir site or within the drainage area of a constructed reservoir, or if withdrawn for power purposes, or where the lands have been withdrawn as Game Range Lands, Coordination Lands, or Alaska Wildlife Areas, the offeror or applicant will be required to consent to the inclusion of a stipulation on an approved form. Additional conditions may be imposed to protect the land withdrawn if deemed necessary by the agency having jurisdiction over the surface.

Subpart 3104—Applicants and Holders

§ 3104.1 Simultaneous applications or offers for lease.

(a) Where applications or offers received by mail or filed over the counter at the same time are in conflict the right of priority of filing will be determined by public drawing.

(b) The priorities of all applications or offers to lease made and filed in accordance with the provisions of § 3123.9, whether or not they are in conflict, will be determined by public drawing in the manner provided in § 2311.2–3 of this chapter.

§ 3104.2 Bona fide purchasers.

(a) The Act of September 21, 1959 (73 Stat. 571), as amended by the Act of September 2, 1960 (74 Stat. 781; Public Law 86-705), provides that the right to cancel or forfeit for violation of any of the provisions of this Act shall not apply so as to affect adversely the title or interest of a bona fide purchaser of any lease, option to acquire a lease or an interest therein, or permit which lease, interest, option, or permit was acquired and is held by a qualified person, association, or corporation in conformity with those provisions, even though the holdings of the person, association, or corporation from which the lease, interest, option, or permit was acquired, or of his predecessor in title (including the original lessee of the United States) may have been cancelled or forfeited or may be or may have been subject to cancellation or forfeiture for any such violation.

(b) If in any proceeding to cancel or forfeit a lease, interest in a lease, option to acquire a lease or an interest therein, or a permit acquired in violation of any of the provisions of this Act, an underlying lease, interest, option, or permit is cancelled or forfeited to the Government and there are valid interests therein or valid options to acquire the lease or an interest therein which are not subject to cancellation, forfeiture, or compulsory disposition, such underlying lease interest, option, or permit shall be sold to the highest responsible, qualified bidder by competitive bidding in a manner similar to that provided for in the offering of leases by competitive bidding subject to all outstanding valid interests therein and valid options pertaining thereto. However, if less than the whole interest in the lease, interest, option, or permit is cancelled or forfeited, such partial interest shall likewise be sold in similar manner. If no satisfactory offer is obtained as a result of the competitive offering of such whole or partial interests, such interests may be sold by such other methods as the authorized officer deems appropriate, but on terms not less favorable to the Government than those of the best competitive bid received.

(c) The commencement and conclusion of all such proceedings shall be noted promptly upon the serial register relating to the particular lease or option or other interest involved.

(d) Effective as of September 21, 1959, any party to any proceedings with respect to a violation of any provision of the Act, whether initiated prior or subsequent to that date, has the right to be dismissed promptly as such a party by showing that he holds and acquired the interest involving him as a bona fide purchaser without having violated any provisions of the Act. No hearing shall be necessary upon such showing unless prima facie evidence is presented to indicate a possible violation on the part of the alleged bona fide purchaser.

(e) If during an such proceeding a party thereto files a waiver of his rights under his lease to drill or to assign his interest thereto, or if such rights are suspended by order of the Secretary pending a decision, payment of rentals and the running of time against the term of the lease or leases involved shall be suspended as of the first day of the month following the filing of the waiver or the Secretary's suspension until the first day of the month following the final decision in the proceeding or the revocation of the waiver for suspension.

§ 3104.3 Limitation on time to institute suit to contest a Secretary's decision.

No action contesting a decision of the Secretary involving any oil and gas lease shall be maintained unless such action is commenced or taken within 90 days after the final decision of the Secretary relating to such matter.

Subpart 3105—Helium

§ 3105.1 Recovery.

The ownership of and the right to extract helium from all gas produced from lands leased or otherwise disposed of under the act have been reserved to the United States. Appropriate provision is made in leases with respect to the recovery of helium.

Subpart 3106—Bonds

§ 3106.1 Bonds with individual sureties.

Where surety bonds are tendered with individuals as sureties they must be executed by not less than two qualified individual sureties to cover compliance with all terms and conditions of the lease or permit or the applicable law or regulations. Each surety must execute a statement showing that he is worth in real property not exempt from execution, double the sum specified in the undertaking, over and above his just debts and liabilities and that he is either a resident of the same State and the United States Judicial District as the principal on the bond, or of the State and the Judicial District in which the lands involved are located. There also must be furnished a certificate by a judge or clerk of a court of record, a United States attorney, a United States Commissioner, or a United States postmaster, as to the identity, signature, and financial competency of the sureties. All bonds furnished with individual sureties will be examined every two years, or at any other time when found advisable, and the principal on the bond will be required to furnish new statements of justification by the sureties and a new certificate of financial competency, and if such sureties are unable to qualify additional security will be required. The statement of justification required to be furnished by the sureties, and the certificate of competency should be on a form approved by the Director.

PART 3120—OIL AND GAS

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AUTHORITY: The provisions of this Part 3120 issued under sec. 32, 41 Stat. 450; 30 U.S.C. 189.

Subpart 3120—Oil and Gas; General

§ 3120.1 General provisions.

§ 3120.1–1 Applicability of amendatory act to existing leases.

Prior to the filing of the notice of election hereinafter referred to, the act of August 8, 1946 (60 Stat. 950; 30 U.S.C. 181) applies to leases issued prior to the date of that act only where the amendatory act so

provides. The owner of any lease issued prior to August 8, 1946, may elect pursuant to section 15 to come entirely under the provisions of that act by filing a notice of election to have his lease governed by the amendatory act, accompanied by the consent of the surety if there is a bond covering the lease. A notice of election so filed shall constitute an amendment of all provisions of the lease to conform with the provisions of the amendatory act and the regulations issued hereunder.

§ 3120.1–2 Acreage limitations.

(a) No person, association, or corporation shall take hold, own, or control at one time oil and gas leases (including options for such leases or interests therein) whether directly through ownership of leases or interests in leases and applications, or offers therefor or indirectly as a member of an association or associations or as a stockholder of a corporation or corporations, holding leases or interests therein and applications or offers therefor for more than 246,080 acres in any one State, of which no more than 200,000 acres may be held under option, except that in the State of Alaska the acreage limitation is 300,000 acres in the northern leasing district and 300,000 acres in the southern leasing district, of which no more than 200,000 acres may be held under option in each of the two leasing districts.

(1) The boundary between the two leasing districts in the State of Alaska is the left limit of the Tanana River from the boundary between the United States and Canada to the confluence of the Tanana River and Yukon River and the left limit of the Yukon River from said confluence to its principal southern mouth.

(2) Leases or offers or applications for leases committed to any unit or cooperative plan approved or prescribed by the Secretary of the Interior shall not be included in computing accountable acreage. Leases or offers or applications for leases subject to an operating, drilling or development contract approved by the Secretary of the Interior pursuant to section 17(j) of the act, other than communization agreements, shall be excepted in determining the accountable acreage of the lessees or operators.

(3) Where, as the result of the termination or contraction of a unit or cooperative plan, or the elimination of a lease from operating, drilling, or development plan, a party holds or controls excess accountable acreage, such party shall have 90 days from such termination or contraction or elimination in which to reduce his holdings to the prescribed limitation and to file proof of such reduction in the proper land office.

(b) In computing acreage holdings or control, the accountable acreage of a party owning an undivided interest in a lease shall be such party's proportionate part of the total lease acreage. Likewise, the accountable acreage of a party owning an interest in a corporation or association shall be his proportionate part of the corporation's or association's accountable acreage except that no person shall be charged with his pro rata share of any acreage holdings of any association or corporation unless he is the beneficial owner of more than ten per centum of the stock or other instruments of ownership or control of such association or corporation. An option held by a corporation or an association on September 2, 1960, shall not, for a period of 3 years, be charged to any stockholder of the corporation or member of the association so long as it is so held. Parties owning a royalty or other interest determined by or payable out of a percentage of production from a lease will be charged with a similar percentage of the total lease acreage.

(c) No lease will be issued and no transfer or operating agreement will be approved until it has been shown that the offeror, transferee, or operator is entitled to hold the acreage or obtain the operating rights.

(d) At any time upon request by the authorized officer of the Bureau of Land Management, the record title holder of any lease or a lease operator or a lease offeror or the holder of any lease option may be required to file in the appropriate land office a statement, showing as of a specified date the serial number and the date of each lease of which he is the record holder, or under which he holds operating rights, or for which he holds an option, and each application or offer for lease held or filed by him in the particular State setting forth the acreage covered thereby, and the nature, extent and acreage interest, including royalty interests held by him in any oil and gas

lease of which the reporting party is not the lessee of record, whether by corporate stock ownership, interest in unincorporated associations and partnerships, or in any other manner.

(e) (1) If any person holding or controlling only leases or interests in leases or options or interests in options is found to hold accountable acreage in violation of the provisions of this section and of the act, the last lease or leases or interest or interests acquired by him which with the options or interests in options created the excess acreage holdings shall be cancelled or forfeited in their entirety, even though only part of the acreage in the lease or interest constitutes excess holdings, unless it can be shown to the satisfaction of the Director of the Bureau of Land Management that the holding or control of the excess acreage is not the result of negligence or willful intent in which event the lease or leases shall be cancelled only to the extent of the excess acreage.

(2) If any person holding or controlling leases or interests in leases only, or applications or offers for leases only, or both leases or interests in leases and applications or offers or options or interests in options below the acreage limitation provided in this section, files an application or offer, or a group of applications or offers (filed simultaneously), or options or interests in options or group thereof which causes him to exceed the acreage limitation, the application or offer, or group of applications or offers, causing the excess holding, will be rejected in its entirety.

(3) If any person holding or controlling both leases or interests in leases and applications or offers for leases, or options or interests in options or only applications or offers for leases below the acreage limitation provided in this section, acquires a lease or leases, or an option or options or interests therein; which cause him to exceed the acreage limitation, his most recently filed application or offer for lease or applications or offers for lease then containing acreage in excess of the limitation provided in this section will be rejected in its or their entirety. For the purpose of this subparagraph, time of filing shall be determined by the time of filing marked on the application or offer or, if the same time is marked on two or more applications or offers, by the serial number of the applications or offers.

(4) The provisions of this paragraph shall not limit any action which the Department may take with respect to excess acreage holdings in cases not otherwise covered by this paragraph.

§ 3120.1–3 Options.

(a) No option to acquire any interests in an oil and gas lease shall be enforceable if entered into for a period of more than three years (inclusive of any renewal period, if provided for in the option) without the prior approval of the Secretary. The acreage to which the option is applicable shall be charged both to the optionor and to the optionee, but the charge to the optionor shall cease when the option is exercised. If the option covers only a part of the optionor's interest in the acreage included in a lease, the acreage to which the option is applicable shall be fully charged to the optionor, and a share thereof shall also be charged to the optionee as his interest may appear. Upon the exercise of the option, the acreage shall be charged to the parties pro rata as their interests may appear. An unexercised option remains charged during its term until notice of its relinquishment or surrender has been filed in the appropriate land office.

(1) No option or renewal thereof executed after September, 1960, shall be enforceable until notice thereof has been filed in the appropriate land office. No such notice shall be required for options or renewals executed prior to September 2, 1960. Each such notice shall include (i) the names and addresses of the parties thereto; (ii) the serial number of the lease or application for lease to which the option is applicable; (iii) a statement of the number of acres covered thereby and of the interests and obligations of the parties thereto; and (iv) the interest to be conveyed and retained on exercise of the option. Such notice shall be subscribed by all parties to the option or their duly authorized agents. The filing of an executed copy of the option containing the above information shall satisfy the foregoing requirement. In addition, the notice of option must contain or be accompanied by a signed statement, by the holder of the option, that he is the sole party in interest in the option; if not, he shall

set forth the names and nature and extent of the interest therein of the other interested parties, the nature of the agreement between them if oral, and a copy of such agreement, if written.

(b) An option hereafter taken on a lease application or offer may be for the period of time until issuance of the lease and three years thereafter. Where it is sought to obtain options for periods in excess of those provided in the preceding sentence, an application should be filed with the authorized officer of the Bureau of Land Management, accompanied by a complete showing as to the special or unusual circumstances which are believed to justify approval of the application.

(c) Within the meaning of this section, options may be taken only on lands embraced in leases and offers or applications for leases and the acreage included in any such option taken upon an application or offer for a lease shall be chargeable from and after the date of such option.

(d) It shall be permissible for any such option to provide that where all or any part of the land covered thereby is included in a cooperative or unit plan (as defined in § 3121.1) duly executed by the parties and submitted to the Secretary for final approval prior to the expiration of the three-year option period, then, as to that part of the land covered by said option which is included in said cooperative or unit plan, such option shall not expire until a date 30 days after the date of final approval or disapproval by the Secretary of that cooperative or unit plan.

(e) Each holder of an option must file in the appropriate land office within 90 days after June 30 and December 31 of each year duplicate statements showing as of the prior June 30 and December 31, respectively (1) his name and the name and address of each grantor of an option held by him, the serial number of every lease, application or offer for lease subject to option; (2) date and expiration date of each option; (3) number of acres covered by each option; (4) aggregate number of options held in each State, and total acreage thereof; and (5) a statement of his interest and obligation under each option; provided, that the statement of his interest and obligation with respect to any option shall not be required where such interests and obligations have been set forth in the notice required under paragraph (a) of this section and there have been no changes in such interests and obligations since such filing. Option statements covering lands in the State of California shall be filed in the land office at Sacramento, California. The failure of the holder of an option to file such statement shall render the option unenforceable by him, but this shall not diminish the acreage deemed to be held under option by the optionee in computing the amount chargeable and shall not relieve any party thereto of any liability to cancellation, forfeiture, forced disposition, or other sanction provided by law.

(f) If the statement shows or it is otherwise ascertained that the optionee holds options in excess of the prescribed limitation, he will be given 30 days within which to file proof of reduction of his option holdings to the limitations prescribed by the act.

§ 3120.2 Known geological structures and naval reserves.

§ 3120.2–1 Lands within one mile of naval petroleum or helium reserves.

No oil and gas lease will be issued for land within one mile of the exterior boundaries of a naval petroleum or a helium reserve, unless the land is being drained of its oil or gas deposits or helium content by wells on privately owned land or unless it is determined by the authorized officer, after consultation with the agency exercising jurisdiction over the reserve, that operations under such a lease will not adversely affect the reserve through drainage from known productive horizons.

§ 3120.2–2 Boundaries of known geologic structures.

(a) The Director of the Geological Survey will determine the boundaries of the known geologic structures of producing oil or gas fields, and, where necessary to effectuate the purposes of the act, the productive limits of producing oil or gas deposits as such limits existed on August 8, 1946.

(b) Determinations of "structures defined" will be followed, as soon as practicable, by the filing in the appropriate land office of maps or diagrams showing the structure boundaries, and by publication in the FEDERAL REGISTER of notices that the determinations have

been made. Because determinations of "structures undefined" are usually of a more temporary nature, maps or diagrams thereof will not be filed and notices thereof will not be published; however, a memorandum of each such determination will be filed in the appropriate land office and will be available for public inspection. Additional information concerning the procedures used in making the determinations may be obtained from the Geological Survey, Washington 25, D.C.

(c) In accordance with long-standing rulings of the Department, if the producing character of a structure underlying a tract of land is actually known prior to the date of the Department's official pronouncement on that subject, it is the date of the ascertainment of the fact, and not the date of the pronouncement, that is determinative of rights which depend upon whether the land is or is not situated within a known geologic structure of a producing oil or gas field. Ernest A. Hanson, A–26375 (May 29, 1952), and cases cited therein. All determinations are subject to change at any time upon receipt of further information through the drilling of wells and other sources. Accordingly, lessees or applicants for leases should not rely upon the maps, diagrams, determinations or notices thereof, as currently controlling documents.

(d) Any lessee or his operator may apply to the Director of the Geological Survey for a determination whether the land in his lease is inside or outside the productive limits of a producing oil or gas deposit as such limits existed on August 8, 1946.

§ 3120.3 Drainage.

§ 3120.3–1 Compensation for drainage.

Upon a determination by the Director of the Geological Survey that lands owned by the United States are being drained of oil or gas by wells drilled on adjacent lands, the authorized officer of the Bureau of Land Management, may execute agreements with the owners of adjacent lands whereby the United States, or the United States and its lessees, shall be compensated for such drainage, such agreements to be made with the consent of any lessee affected thereby. The precise nature of any agreement will depend on the conditions and circumstances involved in the particular case.

§ 3120.3–2 Protection from drainage.

(a) Where land in any lease is being drained of its oil or gas content by a well either on a Federal lease issued at a lower rate of royalty or on land not the property of the United States, the lessee must drill and produce all wells necessary to protect the leased lands from drainage. In lieu of drilling such wells, the lessee may, with the consent of the Director of the Geological Survey, pay compensatory royalty in the amount determined in accordance with 30 CFR 221.21.

(b) The payment of compensatory royalty shall extend the primary or extended term of any lease for the period during which such compensatory royalty is paid, and for a period of one year from the discontinuance of such payment, and for so long thereafter as oil or gas is produced in paying quantities.

§ 3120.3–3 Leasing of wildlife refuge lands, game range lands and coordination lands.

(a) *Definitions*—(1) *Wildlife refuge lands.* Such lands are those embraced in a withdrawal of public domain and acquired lands of the United States for the protection of all species of wildlife within a particular area. Sole and complete jurisdiction over such lands for wildlife conservation purposes is vested in the United States Fish and Wildlife Service even though such lands may be subject to prior rights for other public purposes or, by the terms of the withdrawal order, may be subject to mineral leasing.

(2) *Game range lands.* Game ranges created by a withdrawal of public lands and reserved for dual purposes, namely protection and improvement of the public grazing lands and natural forage resources and conservation and development of natural wildlife resources, are under the joint jurisdiction of the Bureau of Land Management and the United States Fish and Wildlife Service.

(3) *Coordination lands.* These lands are withdrawn or acquired by the Government and made available to the States by cooperative agreements entered into between the United States Fish and Wildlife Service and the game commissions of the various States, in accordance with the act of March 10,

1934 (48 Stat. 401), as amended by the act of August 14, 1946 (60 Stat. 1080), or by long-term leases or agreements between the Department of Agriculture and the game commissions of the various States pursuant to the Bankhead-Jones Farm Tenant Act (50 Stat. 525), as amended, where such lands were subsequently transferred to the Department of the Interior, with the United States Fish and Wildlife Service as the custodial agency of the Government.

(4) *Alaska wildlife areas.* Such lands are areas in Alaska created by a withdrawal of public lands for the management of natural wildlife resources and administered by the United States Fish and Wildlife Service.

(b) *Leasing policy and procedure.* (1) No offers for oil and gas leases covering wildlife refuge lands will be accepted and no leases covering such lands will be issued except as provided in subparagraph (2) of this paragraph. There shall be no drilling or prospecting under any lease heretofore or hereafter issued on lands within a wildlife refuge except with the consent and approval of the Secretary of the Interior with the concurrence of the Fish and Wildlife Service as to the time, place and nature of such operations in order to give complete protection to wildlife populations and wildlife habitat on the areas leased, and all such operations shall be conducted in accordance with the stipulations in the Bureau of Land Management stipulation on a form approved by the Director.

(2) In instances where it is determined by the Geological Survey that any of the lands mentioned in paragraph (a)(1), or any of the lands mentioned in paragraph (a) (2), (3) and (4) of this section and defined in this section as not available for leasing are subject to drainage, the Bureau of Land Management, with the concurrence of the United States Fish and Wildlife Service, will process an offering inviting competitive bids in accordance with the then existing regulations relating to competitive oil and gas leasing. Such leases shall be issued only upon approval by the Secretary of the Interior and shall contain such stipulations as are necessary to assure that leasing activities and drilling shall be carried out in such a manner as will result in a minimum of damage to wildlife resources.

(3) As to game range lands and Alaska wildlife areas, representatives of the appropriate office of the Bureau of Land Management and the United States Fish and Wildlife Service will confer for the purpose of entering into an agreement specifying those lands which shall not be subject to oil and gas leasing. No such agreement shall become effective, however, until approved by the Secretary of the Interior. As to coordination lands, representatives of the Bureau of Land Management and the United States Fish and Wildlife Service will, in cooperation with the authorized members of the various State game commissions, confer for the purpose of determining by agreement those lands which shall not be subject to oil and gas leasing.

(4) The remaining lands in paragraph (a) (2) and (4) of this section not closed to oil and gas leasing will be subject to leasing on the imposition of such stipulations agreed upon by the Fish and Wildlife Service and the Bureau of Land Management. The remaining lands in paragraph (a) (3) of this section not closed to oil and gas leasing will be subject to leasing on the imposition of such stipulations agreed upon by the State Game Commission, the United States Fish and Wildlife Service, and the Bureau of Land Management.

(c) *Publication and filing of agreements; filing of lease offers.* The agreements referred to in paragraph (b) (3) of this section shall be published in the FEDERAL REGISTER and shall contain a description of the lands affected thereby which are not subject to oil and gas leasing, together with a statement of the stipulations agreed upon by the parties thereto for inclusion in such leases to assure that all operations under the lease shall be carried out in such a manner as will result in a minimum of damage to wildlife resources. The agreements, as supplemented by maps or plats specifically delineating the lands will be filed in the appropriate land offices of the Bureau of Land Management where they may be inspected by the public at the usual hours specified for that purpose. Lease offers for such lands will not be accepted for filing until the tenth day after the agreements and supplemental maps or plats are noted on the land office records.

(d) *Suspension of pending applications.* All pending offers or applications

heretofore filed for oil and gas leases covering game ranges, coordination lands, and Alaska wildlife areas, will continue to be suspended until the agreements referred to in paragraph (b) (3) of this section shall have been completed.

(e) *Lands in requested withdrawal.* All existing offers or applications for oil and gas leases covering lands included in request for withdrawals for wildlife refuges, game ranges, coordination lands or Alaska wildlife areas, as defined herein, shall be suspended until after the consummation of the withdrawal, and thereafter such offers shall be considered in accordance with the provisions of this section.

NOTE:

Stipulations. For inclusion in oil and gas leases entered into pursuant to this section relating to oil and gas leases in wildlife refuge, game range, and coordination lands.

Instructions. (1) The following stipulations will be made a part of Interior Department lease forms. These stipulations will be made applicable as terms and conditions of performance by lessees under all oil and gas leases entered into under authority vested in the Secretary of the Interior over game range, coordination or Alaska Wildlife lands pursuant to the order of the Secretary of the Interior published in 23 F.R. 227, January 11, 1958.

(2) Should compliance with one or more of these terms and conditions be considered unduly burdensome and unnecessary to the protection of wildlife resources, the lessee may request waiver thereof by letter addressed to the Secretary of the Interior setting forth, in full, the reasons why a waiver is considered necessary. The authority to grant such waivers shall be discretionary and may be exercised only by the Secretary or the Under Secretary of the Interior.

(3) The authorized officer shall (a) approve no plan of operation that contains provisions inconsistent with the stipulations hereinafter set forth; (b) waive no term or condition in a lease; or (c) exercise no discretion vested in him unless he is satisfied the exercise of that discretion will not damage any wildlife resource.

(4) Drilling and production operations under the lease shall be under the direction of the Geological Survey.

Terms and conditions. (1) as used herein:

(a) The term "lessee" includes the lessee, heirs and assigns of the lessee and persons operating on behalf of the lessee;

(b) The term "wildlife resources" includes fish and wildlife resources and concentrations, fish and wildlife management operations and range improvements and facilities;

(c) The term "authorized officer" means the State Director of the Bureau of Land Management in the State in which the land is located, and, in Alaska, the Refuge Manager of the Bureau of Sport Fisheries and Wildlife;

(2) The lessee shall:

(a) Comply with all the rules and regulations of the Secretary of the Interior:

(b) Prior to the beginning of operations, appoint and maintain at all times during the term of the lease a local agent upon whom may be served written orders or notices respecting matters contained in these stipulations and to inform the authorized officer in writing of the name and address of such agent. If a substitute agent is appointed, the lessee shall immediately inform the said representative;

(c) Conduct all authorized activities in a manner satisfactory to the authorized officer with due regard for good land management and avoid damage to improvements, timber, crops, and wildlife cover, and fill all sump holes, ditches, and other excavations or cover all debris, and so far as reasonably possible, restore the surface of the leased lands to their former condition and when required to bury all pipelines below plow depth. The authorized officer shall have the right to enter all the premises at any time to inspect both the installation and operational activities of the lessee;

(d) Take such steps as may be necessary to prevent damage to wildlife;

(e) Do all in his power to prevent and suppress forest, brush, or grass fires and to require his employees, contractors, subcontractors and employees of contractors or subcontractors to do likewise;

(f) Install adequate blow-out prevention equipment;

(g) Construct ring dikes and sump pits to confine drilling mud and other pollutants and make safe disposition of salt water by use of injection wells or such other method as may be approved in the plan of operation;

(h) Cover flare pits in acres of wildlife concentration;

(i) Remove derricks, dikes, equipment, and structures not required in producing operations within 60 days after the completion of drilling;

(j) Comply with and see to it that his agents and employees comply with all Federal, State, or territorial laws relating to hunting, fishing, and trapping;

(k) Commit the lease to any unit plan required in the interest of conservation of oil or gas resources or for the protection of wildlife;

(l) Prior to the conduct of geological, geophysical, or core drilling operations or construction of any facilities, or prior to operations to drill or produce, submit in triplicate for approval in writing by the authorized officer a plan of operation that will include detailed statements indicating the manner

in which the lessee will comply with these stipulations together with a statement that the lessee agrees that compliance with these stipulations and with the approved plan of operations are conditions of performance under this lease and that failure to comply with these provisions (unless they are waived by the Secretary or the Under Secretary of the Interior) will be grounds for cancellation of the lease by the United States. Notwithstanding other provisions in these stipulations, the lessee shall include in any plan of operation specific provisions relating to: The time, place, depth and strength of seismographic shots, maps showing the location of his leases included in the plan, actual and proposed access roads, bunkhouses, proposed well locations, storage and utility facilities, water storage, pipelines and pumping stations; the type of safety equipment that will be employed; the methods to be used to assure the disposition of drilling mud, pollutants, and other debris; the location of facilities in relation to flood levels; and such other specific matters as the authorized officer may require. The plan of operation shall be kept current in all respects and all revisions and amendments submitted to the authorized officer for written approval;

(m) Do all things reasonably necessary to prevent or reduce to the fullest extent scarring and erosion of the land, pollution of the water resources and any damage to the watershed. Where construction, operation, or maintenance of any of the facilities on or connected with this lease causes damage to the watershed or pollution of the water resource, the lessee agrees to repair such damage, including reseeding and to take such corrective measures to prevent further pollution or damage to the watershed as are deemed necessary by the authorized officer;

(n) File the bond required by section 2a (4) of the lease before conducting any operations on the leasehold, and file any additional bond required by the authorized officer to pay for damages to wildlife habitat, including trees and shrubs, or wildlife improvements:

(o) Agree to respect and comply with any new requirements imposed by the Secretary of the Interior, or the authorized officer, on the operating program as operating experience proves necessary in order to give complete protection to wildlife populations and wildlife habitat on the areas leased.

(3) The lessee shall not:

(a) Construct roads, pipelines, utility lines, and attendant facilities that are either unnecessary or which might interfere with wildlife habitat or resources or with drainage;

(b) Modify or change the character of streams, lakes, ponds, water holes, seeps, and marshes, except by advance approval in writing by the authorized officer, nor shall he in any way pollute such streams, lakes, ponds, water holes, seeps, or marshes;

(c) Conduct operations at such times as will interfere with wildlife concentrations;

(d) Conduct geological or geophysical explorations that might damage any wildlife resource and such operations shall be conducted only in accordance with advance approval in writing by the authorized officer as to the time, manner of travel and disturbances of surfaces and the facilities required for the protection of wildlife.

(e) Use explosives in fish spawning or rearing areas, nesting areas, lambing grounds, or other areas of wildlife concentration during periods of intense activity or at any other time or in any manner that might damage any wildlife resources; the pattern size, and depth of seismographic shots shall be submitted to the authorized officer for advance approval in writing and immediately following the detonation of any seismographic charge, the hole shall be filled or plugged and any surface damage repaired to the satisfaction of the authorized officer;

(f) Without advance approval in writing, use any water or water source controlled or developed by the United States;

(g) Use mobile equipment under such conditions as to permanently damage surface resources, cause scarring and erosion, or interfere with wildlife concentration;

(h) Conduct geological, or geophysical, or core drilling operations or construct roads, bunkhouses or any facilities or drill or produce under a lease until the submittal and approval in writing of a plan of operation pursuant to section (2) (m) supra or deviate therefrom until any revisions or amendments of said plan have been approved in writing by the authorized officer.

(i) Burn rubbish, trash, or other inflammable materials or use explosives in a manner or at a time that would constitute a fire hazard.

§ 3120.4 Preference right of patentee or entryman to a lease.

(a) An entryman or patentee who made entry prior to February 25, 1920, or an assignee of such entryman or a vendee of such patentee if the assignment or conveyance was made prior to January 1, 1918, for lands not withdrawn or classified or known to be valuable for oil and gas at date of entry shall be entitled, if the entry or patent is impressed with a reservation of the oil or gas, to a preference right to a lease for the land. A settler whose settlement was made prior to February 25, 1920, on land in the same status but which has since been withdrawn, classified, or is known to contain oil or gas, also has such a preference right.

(b) Any offeror for a lease to lands owned, entered or settled upon as stated above must notify the person entitled to a preference right of the filing of the offer and of the latter's preference right for 30 days after notice to apply for a lease. If the party entitled to a preference right files a proper offer within the 30-day period, he will be awarded a lease; but if he fails to do so, his rights will be considered to have terminated.

§ 3120.5 Lands in entries or claims not impressed with a reservation of oil and gas.

(a) Where an offer is filed to lease lands noncompetitively in an entry or settlement claim not impressed with an oil or gas reservation, the offer will be rejected unless it is found that the land is prospectively valuable for oil or gas. An offeror for a lease for land already embraced in a nonmineral entry without a reservation of the mineral, and likewise a nonmineral entryman or settler who is contending that the land is nonmineral in character should submit with their respective offer and application, showings of as complete and accurate geologic data as may be procurable, preferably the reports and opinions of qualified experts.

(b) Should the land be found to be prospectively valuable for oil or gas, the entryman or settler will be notified thereof and allowed a reasonable time to apply for reclassification of the land as nonmineral, submitting a showing therewith, and to apply for a hearing in the event that reclassification is denied, or to appeal. If he does neither, or he is unsuccessful, the entry or settlement rights and any patent issued pursuant thereto will be impressed with a reservation of oil and gas to the United States. In such circumstances a lease will be granted to the offeror, all else being regular, unless the entryman or settler has a preference right.

§ 3120.6 Showing required for unsurveyed lands.

Every offeror for oil and gas lease for unsurveyed lands, must state in his offer that there are no settlers upon the land, or if there be settlers, give the name and post office address of each and a description of the lands claimed, by metes and bounds and approximate legal subdivisions.

Subpart 3121—Cooperative Conservation Provisions

§ 3121.1 Cooperative or unit plans.

The act authorizes lessees and their representatives to unite with each other, or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan of development or operation of any oil or gas pool, field, or like area, or any part thereof (whether or not any part of such pool, field, or like area is then subject to any cooperative or unit plan of development or operation). The agreement must be for the purpose of more properly conserving the natural resources of any such oil or gas pool, field, or area covered thereby and must be determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest. The Secretary, with the consent of the lessees, is authorized to establish, alter, change or revoke drilling, producing, rental, minimum royalty, and royalty requirements of the leases and to make such regulations with reference to such leases as he may deem necessary or proper to secure the protection of the public interest. All leases committed to any unit or cooperative plan approved or prescribed by the Secretary of the Interior shall be excepted in determining acreage charges. For the extension of leases committed to a unit plan, see § 3127.4.

§ 3121.2 Applications for approval of plan.

The procedure in obtaining approval of a cooperative or unit plan of development including suggested text of an agreement acceptable to the Department is contained in 30 CFR Part 226, "Unit or Cooperative Agreements". All applications to unitize and all documents incident thereto shall be filed in the office of the oil and gas supervisor, Geological Survey for the region in which the unit area is situated.

§ 3121.3 Communitization or drilling agreements.

(a) The Secretary is authorized when separate tracts under lease cannot be independently developed and operated in conformity with an established well-spacing or well-development program, to approve communitization or drilling agreements for the lease or any portion

thereof with other lands, whether or not owned by the United States, when in the public interest. Operations or production pursuant to such an agreement shall be deemed to be operations or production as to each lease committed thereto.

(b) Preliminary requests to communitize separate tracts shall be filed in triplicate with the oil and gas supervisor and executed agreements shall be submitted in sufficient number to permit retention of five copies by the Department after approval.

(c) The agreement shall describe the separate tracts comprising the drilling or spacing unit, shall show the apportionment of the production or royalties to the several parties and the name of the operator, and shall contain adequate provisions for the protection of the interests of all parties, including the United States. The agreement must be signed by or in behalf of all necessary parties and will be effective only after approval by the Secretary of the Interior as provided therein.

§ 3121.4 Approval of operating, drilling, or development contracts.

(a) The authority of the Secretary to approve operating, drilling, or development contracts without regard to acreage limitations ordinarily will be exercised only to permit operators or pipeline companies to enter into contracts with a number of lessees sufficient to justify operations on a large scale for the discovery, development, production, or transportation of oil or gas and to finance the same.

(b) A contract submitted for approval under this provision should be filed with the appropriate land office manager, Bureau of Land Management, together with enough copies to permit retention of 5 copies by the Department after approval. It should be accompanied by a statement showing all the interests held by the contractor in the area or field and the proposed or agreed plan of operation or development of the field. All the contracts held by the same contractor in the area or field should be submitted for approval at the same time, and full disclosure of the project made. Complete details must be furnished in order that the Secretary may have facts upon which to make a definite determination in accordance with the provisions of the act, and prescribe the conditions on which approval of the contracts is made.

§ 3121.5 Combinations for joint operation or for transportation of oil.

Upon obtaining the approval of the Secretary, lessees may combine their interests in leases for the purpose of constructing and carrying on the business of a refinery, or of estblishing and constructing as a common carrier a pipe line or lines of railroads to be operated and used by them jointly in the transportation of oil from their several wells or from the wells of other lessees, or to increase the acreage which may be acquired or held under the provisions of section 17 of the act relating to competitive leases. An application under this section together with enough copies to permit retention of 5 copies by the Department after approval should be filed with the Director, Bureau of Land Management. The application must show a reasonable need for the combination and that it will not result in any concentration of control over the production or sale of oil and gas which would be inconsistent with the anti-monopoly provisions of the law. Rights-of-way for oil and gas pipe lines may be granted as provided for in § 2234 of this chapter.

§ 3121.6 Subsurface storage of oil or gas.

(a) In order to avoid waste or to promote conservation of natural resources, the Secretary of the Interior, upon application by the interested parties, may authorize the subsurface storage of oil or gas, whether or not produced from federally owned lands, in lands leased or subject to lease under the act. Such authorization will provide for the payment of such storage fee or rental on the stored oil or gas as may be determined adequate in each case, or, in lieu thereof, for a royalty other than that prescribed in the lease when such stored oil or gas is produced in conjunction with oil or gas not previously produced. Any lease used for the storage of oil or gas shall be extended for the period of such storage and so long thereafter as oil or gas not previously produced is produced in paying quantities.

(b) Applications for subsurface storage shall be filed in triplicate with the oil and gas supervisor and shall disclose the ownership of the lands involved, the

parties in interest, the storage fee, rental, or royalty offered to be paid for such storage and all essential information showing the necessity for such project. Enough copies of the final agreement signed by the parties in interest shall be submitted for the approval of the Secretary to permit retention of 5 copies by the Department after approval.

Subpart 3122—Issuance of Leases

§ 3122.1 Classes and term.

(a) All lands subject to disposition under the act which are known or believed to contain oil or gas may be leased by the Secretary of the Interior. When within the known geologic structure of a producing oil or gas field such land may be leased only by competitive bidding and in units of not exceeding 640 acres to the highest responsible qualified bidder at a royalty of not less than 12½ percent. Leases for not to exceed 2,560 acres, except where the rule of approximation applies, entirely within an area of six miles square or within an area not exceeding six surveyed sections in length or width measured in cardinal directions, may be issued for all other land subject to the act to the first qualified offeror at a royalty of 12½ percent.

(b) All competitive leases shall be for a primary term of five years and so long thereafter as oil or gas is produced in paying quantities and noncompetitive leases for a primary term of ten years and so long thereafter as oil or gas is produced in paying quantities.

(c) Competitive and noncompetitive oil and gas leases for lands in which the United States owns an undivided fractional oil and gas interest may be issued pursuant to the regulations in this part, subject to the provisions of this section.

(d) Rentals, minimum royalties and royalties payable for lands in which the United States owns an undivided fractional interest shall be in the same proportion to the rentals, minimum royalties and royalties provided in §§ 3125.1, 3125.2 and 3125.3, respectively, of this part, as the undivided fractional interest of the United States in the oil and gas underlying the leased lands is to the full mineral interest.

§ 3122.2 Dating of leases.

All competitive and noncompetitive oil and gas leases, excepting renewal leases, will be dated as of the first day of the month following the date the leases are signed on behalf of the lessor except that where prior written request is made a lease may be dated the first of the month within which it is so signed.

§ 3122.3 Leases within unit areas.

(a) Before issuance of an oil and gas lease for lands within an approved unit agreement, the lease applicant or offeror or successful bidder will be required to file evidence that he has entered into an agreement with the unit operator for the development and operation of the lands in his lease under and pursuant to the terms and provisions of the approved unit agreement, or a statement giving satisfactory reasons for the failure to enter into such agreement. If such statement is acceptable, he will be permitted to operate independently but will be required to conform to the terms and provisions of the agreement with respect to such operations.

(b) In case an application or offer for a noncompetitive lease embracing lands partly within and partly without the exterior boundaries of a unitized area is found acceptable, separate leases will be issued, one embracing the lands within the unit area, and one the lands outside of such area.

§ 3122.4 Exchange and renewal leases.

§ 3122.4–1 Conditions.

Any lease which issued for a term of 20 years, or any renewal thereof, or which issued in exchange for a 20-year lease prior to August 8, 1946, may be exchanged for a new lease. Such new lease will be issued for a primary term of five years and so long thereafter as oil or gas is produced in paying quantities and will contain the rental and royalty rates prescribed in §§ 3125.1 thru 3125.3. An application to exchange a lease for a new lease should be filed in triplicate by the lessee with the manager of the appropriate land office, must show full compliance by the applicant with the terms of the lease and applicable regulations, and must be accompanied by a nonrefundable filing fee of $10.

§ 3122.4–2 Application for renewal.

(a) Twenty-year leases or renewals thereof may be renewed for successive terms of 10 years at the rental and royalty rates specified for such renewal leases in §§ 3125.1 through 3125.3. An application to renew should be filed in triplicate, in the proper office as prescribed in § 3123.1(b) at least 90 days, but not more than six months, prior to the expiration of its term, and must be accompanied by a nonrefundable filing fee of $10. Such application should be made by the record title holder or holders of the lease and may be joined in or consented to by the operator of record. The application should show whether all moneys due the United States have been paid and whether operations under the lease have been conducted in accordance with the regulations of the Department.

(b) The applicant or his operator shall furnish in triplicate with the application

for renewal, copies of all agreements not theretofore filed providing for overriding royalties or other payments out of production from the lease which will be in existence as of the date of its expiration. When such payments, including overriding royalties, are in excess of 5 percent of gross production a detailed statement of the income from and costs of operation of the lease for the twelve month period immediately preceding the month in which the application for renewal is filed must also be furnished.

§ 3122.4–3 Action on application.

(a) If the outstanding obligations in excess of five percent of gross production payable from production do not constitute a burden on the lease prejudicial to the interests of the United States, they will not be considered a bar to its renewal but any lease that may be issued will be upon the condition, to be incorporated in the lease, that if and when the cost of operations, including the payment of over-riding royalties or payments out of production, shall be determined by the authorized officer of the Bureau of Land Management to constitute such a burden such royalties and payments shall be reduced to not more than 5 percent of the value of the production. If no objection to the renewal of the lease appears, copies of a renewal lease, in triplicate, dated the first day of the month in which the original lease terminated, will be forwarded to the lessee for execution. If upon receipt of the executed lease forms and a satisfactory lease bond, the lease is executed, one copy thereof will be delivered to the lessee.

(b) If a determination is made that overriding royalties and payments out of production in excess of 5 percent of gross production constitute a burden on lease operations to the extent that proper and timely development will be retarded, or continued operation of the lease impaired, or premature abandonment of the wells caused, the lease application will be suspended and the parties in interest will be offered an opportunity to reduce the excessive overriding royalties or other payments out of production to not more than 5 percent of the value of the production. If the holders of outstanding overriding royalty or other interests payable out of production, the operator, and the lessee are unable to enter into a mutually fair and equitable agreement, any of the parties may apply for a hearing at which all interested parties may be heard and written statements presented. Thereupon a final decision will be rendered by the Department outlining the conditions acceptable to it as a basis for a fair and reasonable adjustment of the excessive overriding royalties and other payments out of production, and an opportunity will be afforded within a fixed period of time to submit proof that such adjustment has been affected. Upon failure to submit such proof within the time so fixed, the application for renewal will be denied.

§ 3122.4–4 Form of lease.

Renewal and exchange leases will be issued on a form approved by the Director. The rentals and royalties payable thereunder will be set out on such schedule as may be appropriate.

Subpart 3123—Noncompetitive Leases

§ 3123.1 Application.

(a) Except as provided in § 3123.9, to obtain a non-competitive lease an offer to accept such lease must be made on a form approved by the Director, "Offer to lease and lease for oil and gas," or on unofficial copies of that form in current use: *Provided,* That the copies are exact reproductions of one page of both sides of the official approved one page form and are without additions, omissions or other changes or advertising. The official form or a valid reproduction of the official form will also constitute the lease when signed by the Manager of the Land Office.

(b) Five copies of the official form, or valid reproduction thereof, for each offer to lease shall be filed in the proper land office, or for land deposits in States for which there are no land offices, with the Director of the Bureau of Land Management, Washington, D.C., 20240. (Offers for lands or minerals deposits in the following States should be filed at the land office named: North Dakota or South Dakota land office at Billings, Montana; Nebraska or Kansas, at Cheyenne, Wyoming; Oklahoma, at Santa Fe, New Mexico.) For the purpose of this part an offer will be considered filed when it is received in the proper office during business hours.

(c) If there is any variation in the land descriptions among the five copies

of the official forms, the copy showing the date and time of receipt in the land office will control.

(d) Each offer must be filled in by typewriter or printed plainly in ink and signed in ink by the offeror or the offeror's duly authorized attorney in fact or agent. An offer may be made by a legal guardian or trustee in his name for the benefit of a non-alien minor or minors but an offer may not be filed by a minor. An offer may not include more than 2,560 acres except where the rule of approximation applies. The lands in the offer must be entirely within an area of six miles square or within an area not exceeding six surveyed sections in length or width. No offer may be made for less than 640 acres except where the offer is accompanied by a showing that the lands are in an approved unit or cooperative plan of operation or such a plan which has been approved as to form by the Director of the Geological Survey, or where the land is surrounded by lands not available for leasing under the act.

§ 3123.2 What should accompany offer.

Each offer, when first filed, shall be accompanied by:

(a) A filing fee of $10 which will be retained as a service charge, even though the offer should be rejected or withdrawn in whole or in part.

(b) Full payment of the first year's rental based on the total acreage if known, and if not known, on the basis of 40 acres for each smallest legal subdivision.

(c) (1) Except in a case where an officer of a corporation signs an offer on behalf of the corporation (as to which see paragraph (g) of this section), evidence of the authority of the attorney-in-fact or agent to sign the offer and lease, if the offer is signed by such attorney or agent on behalf of the offeror. Where such evidence has previously been filed in the same land office where the offer is filed, a reference to the serial number of the record in which it has been filed, together with a statement by the attorney-in-fact or agent that such authority is still in effect will be accepted.

(2) A statement over the offeror's signature setting forth whether the offeror's direct and indirect interests in oil and gas leases, applications, and offers therefor and options exceed 246,080 acres in the same State of which no more than 200,000 acres are under option, or exceed 300,000 acres in each of the northern and southern leasing districts of Alaska, of which no more than 200,000 acres are held under option in each of said leasing districts and in addition, if the offeror is an individual, a statement of his citizenship.

(3) A signed statement by the offeror that he is the sole party in interest in the offer and the lease, if issued; if not he shall set forth the names of the other interested parties. If there are other parties interested in the offer a separate statement must be signed by them and by the offeror, setting forth the nature and extent of the interest of each in the offer, the nature of the agreement between them if oral, and a copy of such agreement if written. Such separate statement and written agreement, if any, must be filed not later than 15 days after the filing of the lease offer. All interested parties must furnish evidence of their qualifications to hold such lease interest.

(d) (1) If the offer is signed by an attorney in fact or agent, it shall be accompanied by separate statements over the signatures of the attorney in fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney in fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one. The statement must be accompanied by a copy of any such written agreement or understanding. If such an agreement or understanding exists, the statement of the attorney in fact or agent should set forth the citizenship of the attorney in fact or agent or other person and whether his direct and indirect interests in oil and gas leases, applications, and offers including options for such leases or interests therein exceed 246,080 acres in any one State, of which no more than 200,000 acres may be held under option, or exceeds the permissible acreage in Alaska as set forth in § 3120.1–2. The statement by the principal (offeror) may be filed within 15 days after the filing of the offer. This requirement does not apply in cases in which the attorney in fact or agent is a member of an unincorporated association (including a partnership), or is an officer of a corporation and has an interest in the offer or the lease to be issued solely by reason of the fact that he is a member of the association or a stockholder in the corporation.

(2) If the power of attorney specifically limits the authority of the attorney in fact to file offers to lease for the sole and exclusive benefit of the principal and not in behalf of any other person in whole or in part, and grants specific authority to the attorney in fact to execute all statements of interest and of holdings in behalf of the principal and to execute all other statements required, or which may be required, by the Acts and the regulations, and the principal agrees therein to be bound by such representations of the attorney in fact and waives any and all defenses which may be available to the principal to contest,

negate or disaffirm the actions of the attorney in fact under the power of attorney, then the requirement that statements must be executed by the offeror will be dispensed with and such statements executed by the attorney in fact will be acceptable as compliance with the provisions of the regulations.

(e) If the offer is made by a guardian or trustee, a certified copy of the court order authorizing him to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; his statements as to the citizenship and holdings of each of the minors; and a similar statement as to his own citizenship and holdings under the leasing act, including his holdings for the benefit of other minors.

(1) Where evidence of the authority to act of a guardian, trustee, an executor or administrator, or where articles of association, including partnership agreements, have previously been filed pursuant to regulations in this section, a reference by serial number to the record in which such evidence has previously been filed, together with a statement as to any amendments thereof will be accepted.

(f) If the offer is made by an association (including a partnership), it must be accompanied by a certified copy of the articles of association and the same showing as to the citizenship and holdings of its members as required of an individual.

(g) If the offeror is a corporation, the offer must be accompanied by a statement showing (1) the State in which it is incorporated, (2) that it is authorized to hold oil and gas leases and that the officer executing the lease is authorized to act on behalf of the corporation in such matters, (3) the percentage of voting stock and of all the stock owned by aliens or those having addresses outside of the United States, and (4) the names and addresses of the stockholders holding more than 10 percent of the stock of the corporation. Where the stock owned by aliens is over 10 percent, additional information may be required by the Bureau before the lease is issued or production is obtained. A separate statement from each stockholder owning or controlling more than 10 percent of the stock of the corporation setting forth his citizenship and holdings must also be furnished. Where such material has previously been filed a reference by serial number to the record in which it has been filed, together with a statement as to any amendments will be accepted.

(h) An offer for a fractional interest noncompetitive oil and gas lease must be filed on a form approved by the Director in accordance with § 3123.1. The offer must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States in each tract covered by the offer to lease. Ordinarily, the issuance of a noncompetitive fractional interest oil and gas lease to one who, upon such issuance, would own less than 50 percent of the operating rights in any such tract, will not be regarded as in the public interest, and an offer leading to such result will be rejected.

§ 3123.3 Rejection of offer.

(a) When any person, association, corporation, or other entity or business enterprise files an offer to lease for inclusion in a drawing, and an offer (or offers) to lease is filed for the same lands in the same drawing by any person or party acting for, on behalf of, or in collusion with the other person, association, corporation, entity or business enterprise, under any agreement, scheme, or plan which would give either, or both, a greater probability of successfully obtaining a lease, or interest therein, in any public drawing, held pursuant to § 3123.9, all offers filed by either party will be rejected. Similarly, where an agent or broker files an offer to lease for the same lands in behalf of more than one offeror under an agreement that, if a lease issues to any of such offerors, the agent or broker will participate in any proceeds derived from such lease, the agent or broker obtains thereby a greater probability of success in obtaining a share in the proceeds of the lease and all such offers filed by such agent or broker will also be rejected. Should any such offer be given a priority as a result of such a drawing, it will be similarly rejected. In the event a lease is issued on the basis of any such offer, action will be taken for the cancellation of all interests in said lease held by each person who acquired any interest therein as a result of collusive filing unless the rights of a bona fide purchaser as provided for in § 3104.2 intervene, whether the pertinent information regarding it is obtained by or was available to the Government before or after the lease was issued.

(b) Except as provided in § 3123.4 an offer which is not filed in accordance with the regulations in this part will be rejected and will afford the offeror no priority.

§ 3123.4 Curable defects.

An offer to lease containing any of the following deficiencies will be approved by the signing officer provided all other requirements are met:

(a) An offer deficient in the first year's rental by not more than 10 percent. The

additional rental must be paid within 30 days from notice under penalty of cancellation of the lease.

(b) An offer covering not more than 10 percent over the maximum allowable acreage of 2,560 acres. The lease will be approved for 2,560 acres in the discretion of the signing officer or so much over that amount as may be included under the rule of approximation.

(c) An offer completed in pencil or script.

(d) An offer on a lease form not currently in use.

(e) An offer on a form not correctly reproduced provided it contains the statement that the offeror agrees to be bound by the terms and conditions of the lease form in effect at the date of filing.

§ 3123.5 Issuance of lease; assignments and withdrawal of offer.

(a) An offer may not be withdrawn, either in whole or in part, unless the withdrawal is received by the land office before the lease, an amendment of the lease, or a separate lease, whichever covers the land described in the withdrawal, has been signed on behalf of the United States.

(b) The United States will indicate its acceptance of the lease offer, in whole or in part, and the issuance of the lease by the signature of the appropriate officer thereof in the space provided. An executed copy of the lease will be mailed to the offeror at the address of record.

(c) If any of the land described in item 2 of the offer is open to oil and gas filing when the offer is filed but is omitted from the lease for any reason and thereafter becomes available for leasing to the offeror, the original lease will be amended to include the omitted land unless, before the issuance of the amendment, the land office receives a withdrawal of the offer with respect to such land or an election to receive a separate lease in lieu of an amendment. Such election shall consist of a signed statement by the offeror asking for a separate lease accompanied by a new offer on the required form describing the remaining lands in his original offer, executed pursuant to this section. The new offer will have the same priority as the old offer. It need not be accompanied by the filing fee. The rental payment held on the original offer will be applied to the new offer. The rental and the lease term for the land added by such an amendment shall be the same as if the land had been included in the original lease when it was issued. If a separate lease is issued, it will be dated in accordance with § 3122.2.

(d) A transfer of the whole interest in all or any part of the offer may be approved as an incident to the transfer, by assignment or otherwise, of the whole interest in all or any part of the lease. A transfer of an undivided fractional interest in the whole offer may be approved as an incident to the transfer of an undivided fractional interest in the whole lease. An application for approval of a transfer of an offer must include a statement that the transferee agrees to be bound by the offer to the extent that it is transferred and must be signed by the transferee. In other instances transfers of an offer will not be approved prior to the issuance of a lease for the lands or deposits covered by the said transfers.

§ 3123.6 Death of offeror.

If an offeror dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed, and if probate has been completed, or is not required, to the heirs or devisees, provided there is filed in all cases an offer to lease in compliance with the requirements of this section which will be effective as of the effective date of the original application or lease offer filed by the deceased. If there are any minor heirs or devisees, such offer can only be made by their legal guardian or trustee in his name. Each such offer must be accompanied by the following information:

(a) Where probate of the estate has not been completed:

(1) Evidence that the person who as executor or administrator submits the offer, and bond form if a bond is required, has authority to act in that capacity and to sign the offer and bond forms.

(2) A statement over the signature of each heir or devisee, similar to that required of an offeror under § 3123.2(d) concerning citizenship and holdings.

(3) Evidence that the heirs or devisees are the heirs or devisees of the deceased offeror and are the only heirs or devisees of the deceased.

(b) Where the executor or administrator has been discharged or no probate proceedings are required:

(1) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the offeror and the provisions of the law of the deceased's last domicile showing that no probate is required.

(2) A statement over the signature of each of the heirs or devisees with reference to holdings and citizenship, similar to that required under § 3123.2(d) except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

§ 3123.7 Determination of priorities.

No lease shall be issued before final action has been taken on (a) any prior offer to lease the land, (b) any subsequent offer to lease the land that is based upon an alleged preferential right, and (c) any petition for the renewal or reinstatement of an existing or former lease on the land. If a lease is issued before final action has been taken on such an offer or petition, it shall be canceled, after due notice to the lessee, if the offeror or petitioner is found to be qualified and entitled to receive a lease on the land.

§ 3123.8 Description of lands in offer.

(a) If the lands have been surveyed under the public land rectangular system, each offer must describe the lands by legal subdivision, section, township, and range. If the lands have not been so surveyed, each offer must describe the lands by metes and bounds, giving courses and distances between the seccessive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the lands are in irregular form, and connected by courses and distances to an official corner of the public land surveys. In Alaska the description of unsurveyed lands must be connected by courses and distances to either an official corner of the public land surveys or to a triangulation station established by any agency of the United States (such as the U.S. Geological Survey, the Coast and Geodetic Survey, or the International Boundary Commission), if the record position thereof is available to the general public.

(b) In lease offers embracing unsurveyed public lands adjacent to tidal waters in southern Louisiana and in Alaska, if the offeror finds it impracticable to furnish a metes and bounds description, as required in paragraph (a) of this section with respect to the water boundary, he may, at his option, extend the boundary of his offer into the water a distance sufficient to permit complete enclosure of the water boundary of his offer by a series of courses and distances in cardinal directions (the object being to eliminate the necessity of describing the meanders of the water boundary of the public lands included in the offer). The description in the lease offer shall in all other respects conform to the requirements of paragraph (a) of this section. Such description would not be deemed for any purpose to describe the true water boundaries of the lease, such boundaries in all cases being the ordinary high water mark of the navigable waters. The land boundaries of such over-all area shall include only the public lands embraced in the offer. The offeror shall agree to pay rental on the full acreage included within the description with the understanding that rights under any lease to be issued on that offer will apply only to the areas within that description properly subject to lease under the act, but that the total area described will be considered as the lease acreage for purposes of rental payments, acreage limitations under § 3120.1–2 and the maximum or minimum area to be included in a lease pursuant to § 3123.1, The tract should be shown in outline on a current quadrangle sheet published by the United States Geological Survey or such other map as will adequately identify the lands described.

(c) When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, all offers to lease lands shown on such protracted surveys, filed on or after such effective date, must, except as provided below, include only entire sections described according to the section, township, and range shown on the approved protracted surveys.

(1) An offer may include less than an entire protracted section where only a portion of such a section is available for lease. In such case the offer must describe all the available lands by subdivisional parts in the same manner as

provided in paragraph (a) of this section for officially surveyed lands. If this is not feasible, as e.g., in the case of an irregular section, the offer must describe the entire section and contain a statement that it shall be deemed to include all of the land in the described section which is available for lease.

(d) The descriptions in leases issued pursuant to offers filed after the effective date of this section will be conformed to the subdivisions of the approved protracted surveys if and when such surveys have been adopted for the area; and the description and acreage of leases issued pursuant to offers filed after the effective date of this section will be adjusted to the official public land surveys when such surveys have been extended over the leased area.

§ 3123.9 Availability of lands.

(a) Lands in cancelled or relinquished leases or in leases which terminate by operation of law for non-payment of rental pursuant to 30 U.S.C. sec. 188, which are not withdrawn from leasing nor on a known geological structure of a producing oil and gas field shall be subject to the filing of new lease offers only after notation on the official record of the cancellation, relinquishment, or termination of such lease and only in accordance with the provisions of this section. All lands covered by leases which expire by operation of law at the end of their primary or extended terms shall likewise be subject to the filing of new lease offers only in accordance with the provisions of this section except that notation of such expiration of the leases need not be made on the official records.

(b) On the third Monday of each month, or the first working day thereafter, if the land office is not officially open on the third Monday, there will be posted on the bulletin board in each land office a list of the lands in leases which expired, were cancelled, were relinquished in whole or in part, or which terminated, together with a notice stating that such lands will become subject to the simultaneous filings of lease offers, in accordance with paragraph (c) of this section, from the time of such posting until 10 a.m. on the fifth working day thereafter. The posted list will describe the lands by leasing units identified by parcel numbers, which will be supplemented by a description of the lands in accordance with § 3123.8, i.e., by subdivision, section, township and range if the lands are surveyed or officially protracted, or if unsurveyed, by metes and bounds. The leasing units will be established to coincide to the extent possible with the lands in an expired, cancelled, relinquished or terminated lease except that where two or more such leases were contiguous and contained a total of 640 acres or less, they may be consolidated into one leasing unit.

(c) Offers to lease such designated leasing units by parcel numbers must be submitted on a form approved by the Director, "Simultaneous Oil and Gas Entry Card" signed and fully executed by the applicant or his duly authorized agent in his behalf. The entry card will constitute the applicant's offer to lease the numbered leasing unit by participating in the drawing to determine the successful drawee. By signing and submitting the entry card, the applicant agrees that he will be bound to a lease on a current form approved by the Director for the described parcel if such a lease is issued to him as a result of the drawing. Only one entry card will be drawn for each numbered leasing unit.

(1) Only one complete leasing unit, identified by parcel number, may be included in one entry card. Lands not on the posted list may not be included therein.

(2) The entry card must be accompanied by separate remittances covering the filing fee of $10 and the first year's advance rental. The advance rental must be paid by cash, money order, certified check, bank draft, or bank cashier's check. The filing fee may be paid by a similar remittance or by uncertified check.

(3) Upon determination of the successful drawee for a particular leasing unit, the first year's rental will not be returnable and will be earned and deposited in the United States Treasury upon execution of the lease in behalf of the United States. However, if an applicant withdraws his entry card prior to the drawing or if his offer to lease is rejected, the advance rental will be returned to him, and if the successful drawee is unqualified to receive the lease, the lands in the numbered leasing unit for which such entry card was submitted shall be included in a simultaneous filing

drawing procedure to be held during the next or a following month thereafter. Unsuccessful drawees will be notified accordingly by the return of their respective entry cards.

(d) If more than one offer to lease all or any part of the acreage covered by an expired, cancelled, relinquished, or terminated lease is filed during the period provided for in paragraph (b) of this section, their priorities will be determined by a public drawing.

(e) Offers to lease which cover lands not within the foregoing categories and which are received in the same mail or over the counter at the same time, will be considered as having been filed simultaneously and priority to the extent of the conflicts between them will be determined by a public drawing.

(f) If no offers to lease all or any portion of the lands in the expired, cancelled, relinquished or terminated leases are received during the period provided for in paragraph (b) of this section the lands for which no offers are received will thereafter become subject to lease in accordance with regulations in this part.

Subpart 3124—Competitive Leases

§ 3124.1 Designation and offer of lands for lease.

The lands and deposits subject to disposition under the act which are within the known geologic structure of a producing oil or gas field will be divided into leasing blocks or tracts in units of not exceeding 640 acres each, which shall be as nearly compact in form as possible, and offered for lease at a royalty and rental to be specified in the notice of sale, to the qualified person who offers the highest bonus by competitive bidding either at public auction, or by sealed bids as provided in the notice of sale.

§ 3124.2 Notice of lease offer.

Notice of the offer of lands for lease will be by publication once a week for five consecutive weeks, or for such other period as may be deemed advisable, in a newspaper of general circulation in the county in which the lands or deposits are situated, or in such other publications as the authorized officer of the Bureau of Land Management may authorize. The notice published in a newspaper of general circulation in the county will contain a statement that the successful bidder will be required, prior to the issuance of a lease to pay his proportionate share of the total cost of publication of that notice which shall be that portion of the total advertising cost that the number of parcels of land awarded to him bears to the number of parcels for which high bidders are declared. The notice will also state the time and place of sale, the manner in which bids may be submitted, the description of the lands, and the terms and conditions of the sale.

§ 3124.3 Qualifications of successful bidder.

The successful bidder at a sale by public auction must on the day of the sale, deposit with the manager of the land office or other officer conducting the sale, and each bidder, if the sale is by sealed bids, must submit with his bid the following: Certified check on a solvent bank, money order, or cash, for one-fifth of the amount bid by him and a statement over the bidder's own signature with respect to citizenship and interests held, similar to that required of an offeror under § 3123.2(c). If the successful bidder is a corporation, it must also file a statement similar to that required by § 3123.2(f).

§ 3124.4 Award of lease.

(a) Following receipt of the report of the auction, or the opening of the sealed bids, the authorized officer, subject to his right to reject any or all bids, will award the lease to the successful bidder. Notice of his action will be forthwith transmitted to the interested parties through the local office. If the lease be awarded, three copies of the lease will be sent to the successful bidder and he will be required within 30 days from receipt thereof to execute them, pay the balance of his bonus bid, the first year's rental, and file a bond as required in § 3126.1. If any bid be rejected, the deposit will be returned. If a bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under this act. If the lease awarded to the successful bidder is executed by an attorney acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the attorney to execute the lease.

(b) If two or more units are awarded to any bidder, such units, where the acreage does not exceed 640 acres, may be included in a single lease if circumstances warrant.

§ 3124.5 Form of lease.

Competitive leases will be issued on a form approved by the Director, and the rentals and royalties payable thereunder will be set forth in a schedule made a part thereof.

Subpart 3125—Rentals and Royalties

§ 3125.1 Rentals.

Rentals shall be payable in advance at the following rates:

(a) On noncompetitive leases issued on and after September 2, 1960, under section 17 of the act for lands which on the day on which the rental falls due lie wholly outside of the known geologic structure of a producing oil or gas field, or on which on the day on which the rental falls due the thirty days' notice period under paragraph (b)(1) of this section has not yet expired, an annual rental of 50 cents per acre or fraction thereof for each lease year.

(1) For the sixth and each succeeding year of a lease which issued prior to September 2, 1960, and in the State of Alaska of any lease whose initial term expired on or after July 3, 1958, rental shall be payable at the rate of 50 cents per acre or fraction thereof.

(2) For each year of the primary term of a lease which issued prior to September 2, 1960, rental shall be payable at the rate set forth in the lease.

(b) On leases wholly or partly within the known geologic structure of a producing oil gas field:

(1) If issued noncompetitively under section 17 of the act, and not committed to a cooperative or unit plan which includes a well capable of producing oil or gas and contains a general provision for allocation of production, beginning with the first lease year after the expiration of thirty days' notice to the lessee that all or part of the land is included in such a structure and for each year thereafter prior to a discovery of oil or gas on the leased lands, rental of $2 per acre or fraction thereof.

(2) If issued noncompetitively under section 17 of the act, and committed to an approved cooperative or unit plan which includes a well capable of producing oil or gas and contains a general provision for allocation of production, the rental prescribed for the respective lease years in paragraph (a) of this section shall apply to the acreage not within a participating area.

(3) If issued competitively, unless a different rate of rental is prescribed in the lease, an annual rental of $2 per acre or fraction thereof prior to a discovery on the leased lands. After a discovery, if the lease is unitized, such rental shall be payable on the nonparticipating acreage only, and royalty as provided in the lease and elsewhere in this Part shall be payable on the participating acreage.

(c) On leases issued in any other way, an annual rental of $1 per acre or fraction thereof.

(d) A lease subject to the provisions of section 31 of the act, as amended by section 1(7) of the Act of July 29, 1954 (30 U.S.C. 188) on which there is no well capable of producing oil or gas in paying quantities, shall automatically terminate by operation of law if the lessee fails to pay the full rental due on or before the anniversary date of the lease. However, if the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely. The "anniversary date" of a lease means the same day and month in succeeding years as that on which the lease first became effective. The anniversary date of a lease does not change.

(e) If on the anniversary date of the lease less than a full year remains in the lease term, the rentals due shall be in the same proportion to the annual rental as the period remaining in the lease term is to a full year. The rentals shall be prorated on a monthly basis for the full months, and on a daily basis for the fractional months remaining in the lease term. For the purpose of prorating rentals for a fractional month, each month will be deemed to consist of 30 days.

(1) If the term of a lease for which prorated rentals have been paid is further extended to or beyond the next anniversary date of the lease, rentals for the balance of the lease year shall be due and payable on the date following the

date through which the prorated rentals were paid. If the rentals are not paid for the balance of the lease year, the lease will be subject to cancellation by the Secretary after he has given notice to the lessee in accordance with section 31 of the act. However, if the anniversary date occurs before the end of the notice period, the rental for the ensuing lease year shall nevertheless be due on the anniversary date, and failure to pay the full rental for that year on or before that date shall cause the lease to terminate automatically by operation of law, without relieving the lessee of liability for rental due for the balance of the previous lease year. (30 U.S.C. 189; 41 Stat. 437.) If the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely.

§ 3125.2 Minimum royalty.

On leases issued on or after August 8, 1946, and on those issued prior thereto if the lessee files an election under section 15 of the act of August 8, 1946, a minimum ryality of $1 per acre in lieu of rental, shall be payable at the expiration of each lease year after a discovery has been made on the leased lands, commencing with the lease year, beginning on or after the date of such discovery, except that on unitized leases the minimum royalty shall be payable only on the participating acreage. If the actual royalty paid during any year aggregates less than $1 per acre the lessee must pay the difference at the expiration of the lease year.

§ 3125.3 Royalty on production.

(a) On and after August 8, 1946, the following royalty rates shall be paid on the production removed or sold from leases:

(1) 12½ percent royalty on noncompetitive leases issued under section 17 of the act: *Provided, however,* That any holder of a lease for lands in Alaska which issued and was outstanding prior to May 3, 1958, who shall drill and make the first discovery of oil or gas in commercial quantities in any geologic structure shall pay a royalty on all production under the lease of 5 percent for 10 years following the date of such discovery and thereafter the royalty rate shall be 12½ percent. If such lease is committed to an approved unit or cooperative plan under which such a discovery is made, the 5 percent rate herein provided shall, for the purpose of computing royalty due the United States, inure to the benefit of all the land to which an allocation is made under such plan.

(2) Such rates as are prescribed in the notice of sale in the case of all leases thereafter issued by competitive bidding.

(3) 12½ percent on all leases theretofore issued, except competitive leases, and on exchange and renewal leases thereafter issued, as to production from

(i) Land determined by the Director, Geological Survey, not to be within the productive limits of any oil or gas deposit on August 8, 1946.

(ii) An oil or gas deposit which was discovered after May 27, 1941, by a well or wells drilled within the boundaries of the lease and which is determined by the Director, Geological Survey, to be a new deposit.

(iii) Or allocated to a lease pursuant to an approved unit or cooperative agreement from an oil or gas deposit which was discovered on unitized land after May 27, 1941, and determined by the Director, Geological Survey, to be a new deposit, but only if at the time of discovery the lease or, in the case of an exchange lease, the lease for which it was exchanged was committed to the agreement or was included in a duly executed and filed application for approval of the agreement.

(4) From lands within exchange and renewal leases not subject to subparagraph (3) of this paragraph the rate of royalty shall be identical to that prescribed in the prior lease, except that for a lease issued in exchange for or as a renewal of a lease carrying a flat royalty rate of 5 percent to the United States the royalty shall be as follows:

(i) When the average production of oil for the calendar month in barrels per well per day is:

Not over 110 the royalty shall be 12½%.

Over 110 but not over 130 the royalty shall be 18% of all production.

Over 130 but not over 150 the royalty shall be 19% of all production.

Over 150 but not over 200 the royalty shall be 20% of all production.

Over 200 but not over 250 the royalty shall be 21% of all production.

Over 250 but not over 300 the royalty shall be 22% of all production.

Over 300 but not over 350 the royalty shall be 23% of all production.

Over 350 but not over 400 the royalty shall be 24% of all production.

Over 400 the royalty shall be 25% of all production.

(ii) On gas, including inflammable gas, helium, carbon dioxide, and all other natural gases and mixtures thereof, and on natural or casinghead gasoline and other liquid products obtained from gas; when the average production of gas per well per day for the calendar month does not exceed 5,000,000 cubic feet, 12½ percent; and when the production of gas exceeds 5,000,000 cubic feet, 16⅔ percent of the amount or value of the gas and liquid products produced.

(5) In the case of competitive leases, and other leases theretofore issued, insofar as subparagraphs (3) and (4) of this paragraph are inapplicable, the rates specified in the lease.

(b) The average production per well per day for oil and for gas shall be determined pursuant to 30 CFR Part 221, "Oil and Gas Operating Regulations."

(c) In determining the amount or value of gas and liquid products produced, the amount or value shall be net after an allowance for the cost of manufacture. The allowance for cost of manufacture may exceed two-thirds of the amount or value of any product only on approval by the Secretary of the Interior.

(d) The Secretary of the Interior may establish reasonable values for purposes of computing royalty on any or all oil, gas, natural gasoline, and other liquid products obtained from gas, due consideration being given to the highest price paid for a part or for a majority of production of like quality in the same field, to the price received by the lessee, to posted prices and to other relevant matters. In appropriate cases this will be done after notice to the parties and opportunity to be heard.

§ 3125.4 Limitation of overriding royalties.

An agreement creating overriding royalties or payments out of the production of oil which, when added to overriding royalties or payments out of production of oil previously created and to the royalty payable to the United States, aggregate in excess of 17½ percent shall be deemed a violation of the terms of the lease unless such agreement expressly provides that the obligation to pay such excess overriding royalty or payments out of production of oil shall be suspended when the average production of oil per well per day averaged on the monthly basis is 15 barrels or less. The limitation on overriding royalties or payments out of production is not applicable to the production of gas. The limitation in this section will apply separately to any zone or portion of a lease segregated for computing Government royalty.

Subpart 3126—Bonds

§ 3126.1 Types of bonds.

(a) The successful bidder for a competitive lease prior to the issuance of the lease must furnish a corporate surety bond in the sum of at least double the amount of the $2 per acre annual rental but in no case less than $1,000 nor more than $10,000 conditioned on compliance with all the terms of the lease, and such a bond also must be filed when all or any part of the land in a lease issued noncompetitively is included within the limits of a known geologic structure of a producing oil or gas field.

(b) Until a general lease bond is filed, a noncompetitive lessee will be required prior to entry on the leased lands to furnish and maintain a bond in the penal sum of not less than $1,000 in those cases in which a bond is required by law for the protection of the owners of surface rights.

(c) All leases shall provide that where a $10,000 bond is not already being maintained a general lease bond in the penal sum of $10,000 conditioned upon compliance with all lease terms covering the entire leasehold, shall be furnished by the lessee prior to the beginning of drilling operations. An operator or, if there is more than one operator covering different portions of the lease, each operator may furnish a $10,000 general lease bond in his own name as principal on the bond in lieu of the lessee. Where there are one or more operator's bond affecting a single lease, each such bond must be conditioned upon compliance with all lease terms for the entire leasehold. Where a bond is furnished by an operator, suit may be brought thereon without joining the lessee if he is not a party to the bond. An operator's bond will not be accepted unless the operator holds an operating agreement

which has been approved by the Department or has pending an operating agreement in proper condition for approval. The mere designation as operator will not suffice.

(d) Bonds shall be either corporate surety bonds or personal bonds except that bonds with individual sureties as provided in § 3106.1 may be furnished or the protection of the entryman or owner of surface rights. Personal bonds must be accompanied by a deposit of negotiable Federal securities in a sum equal at their par value to the amount of the bond and by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the conditions of the lease bond.

(e) In lieu of bonds required under any of the preceding paragraphs the holder of leases or of operating agreements approved by the Department or holder of operating rights by virtue of being designated operator or agent by the lessees pending departmental approval of operating agreements, may furnish a bond the amount of which must be $150,000 for full nationwide coverage under both the Mineral Leasing Act and the Mineral Leasing Act for Acquired Lands of 1947 (61 Stat. 913; 30 U.S.C. 351–369), or at the rate of $25,000 for each unit of coverage. A unit of coverage shall be all the lands in any one State held by the principal under either the Mineral Leasing Act or the Mineral Leasing Act for Acquired Lands. Coverage under both acts in one State constitutes two units. In lieu of a surety bond, a personal bond in a like amount may be given by the obligor with the deposit as security therefor of negotiable bonds of the United States of a par value equal to the amount specified in the bond. Where upon a default, the surety makes payment to the Government of any indebtedness due under a lease, the face amount of the surety bond and the surety's liability thereunder shall be reduced by the amount of such payment. Thereafter, upon penalty of cancellation of all of the leases covered by such bond that principal shall post a new nationwide bond in the amount of $150,000 or a unit bond, as the case may be, within 6 months after notice, or within such shorter period as the authorized officer of the Bureau of Land Management may fix. However, in lieu thereof, the principal may within that time file separate bonds for each lease. The provisions hereof may be made applicable to any nationwide or unit bond in force at the time of the approval of the amendment of this paragraph by filing in the appropriate land office a written consent to that effect and an agreement to be bound by the provisions hereof executed by the principal and the surety. Upon receipt thereof the bond will be deemed to be subject to the provisions of this paragraph.

§ 3126.2 Form of bonds.

The bonds furnished will be on forms approved by the Director.

Subpart 3127—Continuation or Extension of Lease

§ 3127.1 Single extension.

(a) Under the conditions set out in the following paragraphs of this section, the record title holder of any noncompetitive lease maintained in accordance with the statutory requirements and the regulations in this part which issued prior to September 2, 1960, shall be entitled, to a single extension of the lease at the expiration of the initial five-year term unless then otherwise provided by law. An application for such extension may be filed by the record title holder of the lease, by an assignee whose assignment has been filed for approval, or by an operator whose operating agreement has been filed for approval.

(b) The application for extension must be filed, within ninety days before the expiration date of the lease, on a form approved by the Director. Application for Extension of Oil and Gas Lease",[5] or unofficial copies of that form in current use and must be accompanied by a filing fee of $10 which will be retained as a service charge even though the application is later withdrawn or rejected and, unless previously paid, the sixth year's rental: *Provided,* That the unofficial copies are exact reproductions on one sheet of both sides of the official approved one-page form, and are without additions, omissions, or other changes or advertising. The official form or a valid reproduction of the official form, will also constitute approval of the extension when signed by an authorized officer.

(c) If during the 90 day period prior to the expiration date of the lease, the

record title holder, assignee or operator files an application or request for an extension not on the prescribed form or unofficial copies thereof, or fails to file the prescribed number of copies, or pay the sixth year's rental, a notice will be issued allowing him 30 days to do so. The application will be rejected if such filing or payment is not made within the time allowed.

(d) Where, upon the expiration of the initial 5-year lease term, the leased lands or any part thereof, have been withdrawn from leasing, the lease will not be extended as to such lands, except that, a withdrawal shall not affect the right to an extension if drilling operations were actually commenced on the withdrawn lands prior to the effective date of the withdrawal and such operations were being diligently prosecuted on the expiration date of the lease, or if notice of the withdrawal has not been sent by registered mail to each lessee to be affected thereby, at least 90 days prior to the termination date of the lease.

(e) Upon compliance with, and in accordance with, the provisions of this section, the lease will be extended, subject to the rules and regulations in force at the expiration of the initial term, (1) as to the lands not within the known geologic structure of a producing oil or gas field, for a period of 5 years, and so long thereafter as oil or gas is produced in paying quantities, and (2) as to lands within the known geologic structure of a producing oil or gas field, for a period of 2 years and so long thereafter as oil or gas is produced in paying quantities.

(f) The timely filing of an application for extension shall have the effect of segregating the leased lands until the final action taken on the application is noted on the tract book, or, for acquired lands, on the official records relating thereto, of the appropriate land office. Prior to such notation, the lands are not available to the filing of offers to lease. Offers to lease filed prior to such notation will confer no rights in the offeror and will be rejected.

(g) Upon failure of the lessee or the other persons enumerated in paragraph (a) of this section to file an application for extension within the specified period, the lease will expire at the expiration of its primary term without notice to the lessee. Notation of such expiration need not be made on the official records, but the lands covered by such expired lease will be subject to the filing of new lease offers only as provided in § 3123.9.

§ 3127.2 Continuation of lease as a result of actual drilling operations.

Any lease on which, or for which under an approved cooperative or unit plan of development or operation, actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time shall be extended for two years and so long thereafter as oil or gas is produced in paying quantities. As used in this section "primary term" means all periods in the life of the lease prior to its extension by reason of production of oil or gas in paying quantities.

§ 3127.3 Continuation of lease on termination of production.

(a) A lease which is in its extended term because of production shall not terminate upon cessation of production if, within 60 days thereafter, reworking or drilling operations on the leasehold are commenced and are thereafter conducted with reasonable diligence during the period of nonproduction.

(b) No lease for lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same, unless the lessee fails to place the well on a producing status within 60 days after receipt of notice by registered mail from the Regional Oil and Gas Supervisor to do so: *Provided,* That after such status is established production shall continue on the leased premises unless and until suspension of production is allowed by the Secretary of the Interior under the provisions of the act.

§ 3127.4 Extension for terms of cooperative or unit plan.

(a) Any lease issued for a term of 20 years, or any renewal thereof, committed to a cooperative or unit plan approved by the Secretary of the Interior, or any portion of such lease so committed, shall continue in force so long as committed to the plan, beyond the expiration date of its primary term. This provision does not apply to that portion of any such lease which is not included in the cooperative or unit plan unless the lease was so committed prior to August 8, 1946.

(b) Any other lease issued under any section of the act, committed to any such plan that contains a general provision for the allocation of oil or gas, shall continue in effect as to the land committed so long as the lease remains subject to the plan: *Provided*, That production of oil or gas is had in paying quantities under the plan prior to the expiration date of such lease, whether it be in its primary term or its extended term.

(c) Any lease committed after July 29, 1954 to such a plan, which covers lands within and lands outside the area covered by the plan, shall be segregated, as of the effective date of unitization, into separate leases; one covering the lands committeed to the plan and the other the lands not so committed. The segregated lease covering the nonunitized portion of the lands, shall continue in force and effect for the term thereof but for not less than two years from the date of segregation, and so long thereafter as oil or gas is produced in paying quantities.

§ 3127.5 Extension of lease eliminated from cooperative or unit plan or communitization or drilling agreement and of lease in effect at termination of such plan or agreement.

Any lease eliminated from any approved or prescribed cooperative or unit plan or from any communitization or drilling agreement authorized by the act, and any lease in effect at the termination of such plan or agreement, unless relinquished, shall continue in effect for the original term of the lease, or for two years after its elimination from the plan or agreement or the termination thereof, whichever is the longer, and so long thereafter as oil or gas is produced in paying quantities.

Subpart 3128—Assignments or Transfers

§ 3128.1 Assignments or transfers of leases or interests therein.

Leases may be assigned or subleased as to all or part of the leased acreage and as to either a divided or undivided interest therein to any person or persons qualified to hold a lease. The assignment or sublease must be accompanied by a signed statement by the assignee or sublessee that he is the sole party in interest in the assignment or sublease; if not, he shall set forth the names of the other interested parties. If there are other parties interested in the assignment or sublease, a separate statement must be signed by them and by the assignee or sublessee setting forth the nature and extent of the interest of each, the nature of the agreement between them, if oral, and a copy of the agreement if written. Such separate statement and written agreement, if any, must be filed not later than 15 days after the filing of the assignment or sublease. Subject to final approval by the Bureau of Land Management, assignments or subleases shall take effect as of the first day of the lease month following the date of filing in the proper land office of all the papers required by §§ 3128.2 and 3128.3. No assignment will be approved if the assignee or sublessee or any other parties in interest are not qualified to take and hold a lease or if their bond is insufficient or if they fail to file the statement required by this section. A minor, except a minor heir or devisee of a lessee, is not qualified to hold a lease and an assignment to a minor will not be approved. An assignment of a separate zone or deposit or of a part of a legal subdivision will not be approved unless the necessity therefor is established by clear and convincing evidence.

§ 3128.2 Requirements for filing of transfers.

(a) (1) Except for assignments of royalty interests all instruments of transfer of a lease or of an interest therein, including assignments of working interests, operating agreements, and subleases, must be filed for approval within 90 days from the date of final execution and, except for record title assignments, must contain all of the terms and conditions agreed upon by the parties thereto, together with similar evidence and statements as that required of an offeror under § 3123.2.

(2) To obtain approval of a transfer affecting the record title of an oil and gas lease, a request for such approval must be made, within 90 days from the date of the execution of the assignment by the parties on a form approved by the Director, or unofficial copies of that form in current use may be used for such transfers and requests for approval: *Provided*, That the unofficial copies are exact reproductions on one sheet of both

sides of the official approved one-page form, and are without additions, omissions, or other changes, except that the copies shall include the following statement above the signature of the assignee: "This form is submitted in lieu of the official form and contains all of the provisions thereof as of the date of filing of this assignment." In addition, the name and address of the printer or other party issuing unofficial reproductions of the official form shall be printed thereon. This form may be used for any assignment which affects a transfer of the record title to all or part of an oil and gas lease, but it is not to be used for any other type of transfer. The official form, or a valid reproduction of the official form, will also constitute approval of the assignment when signed by the manager of the land office.

(3) An application for approval of any instrument of transfer of a lease or interest therein or a filing of any such instrument under § 3128.6 must be accompanied by a fee of $10, and an application not accompanied by payment of such a fee will not be accepted for filing by the manager. Such fee will not be returned even though the application later be withdrawn or rejected in whole or in part.

(4) Each instrument of transfer must describe the lands involved in the same manner as described in the lease or in the manner required by § 3123.8.

(30 U.S.C. 189, 49 U.S.C. 1201)

(b) Where an attorney-in-fact or agent, in behalf of the assignor or assignee, signs the instrument of transfer or the application for approval, evidence of the authority of the attorney-in-fact or agent to sign such assignment or application must be furnished. Where such evidence has previously been filed in the same land office where the assignment is filed, a reference to the serial number of the record in which it has been filed will be accepted. In those cases where the application for approval of an assignment is signed by an attorney-in-fact or agent there must also be submitted similar statements and evidence from the principal and the agent or attorney-in-fact to that required by § 3123.2.

(c) If a bond is necessary, it must be furnished. Where an assignment does not create separate leases the assignee, if the assignment so provides, may become a joint principal on the bond with the assignor. Any assignment which does not convey the assignor's record title in all of the lands in the lease must also be accompanied by consent of his surety to remain bound under the bond of record for the lease interest retained by said assignor, if the bond, by its terms, does not contain such consent. If a party to the assignment has previously furnished a nation-wide or statewide bond no additional showing is necessary by such party as to the bond requirement. If any overriding royalty or payments out of production are created which are not shown in the instrument or agreement, a statement must be submitted describing them. If payments out of production are reserved, a statement should be submitted stating the details as to the amount, method of payment, and other pertinent terms. Assignments of record title interests must be filed in triplicate. A single copy of any additional information relating to citienship and qualifications of corporations, will be sufficient. A single executed copy of all other instruments of transfer, or of an operating agreement is sufficient.

(d) In order for the heirs or devisees of a deceased holder of a lease, an operating agreement, or a royalty interest in a producing lease, to be recognized by the Department as the holder of the lease, agreement, or interest, there must be furnished the appropriate showing required under § 3123.6.

(e) The assignor or sublessor and his surety will continue to be responsible for the performance of any obligation under the lease until the assignment or sublease is approved. If the assignment or transfer is not approved, their obligations to the United States shall continue as though no such assignment or transfer had been filed for approval. After approval the assignee or sublessee and his surety will be responsible for the performance of all lease obligations notwithstanding any terms in the assignment or sublease to the contrary.

(f) Unless the lease account is in good standing as to the area covered by the assignment when the assignment and bond are filed, or is placed in good standing before the assignment is reached for action the lease will be cancelled as provided in § 3129.2.

§ 3128.3 Separate assignments required for transfer of record titles to leases.

A separate instrument of assignment must be filed for each oil and gas lease when transfers involve record titles. When transfers to the same person, association, or corporation, involving more than one oil and gas lease are filed at the same time for approval, one request for approval and one showing as to the qualifications of the assignee will be sufficient.

§ 3128.4 Effect of assignment of particular tracts or undivided interests therein.

An assignment of a definitely described portion of the lands in a lease segregates the assigned and the retained portions into separate and distinct leases. An assignment of an undivided interest either in the entire leasehold or in any definitely described portion thereof shall not segregate or have the effect of segregating the lease into separate or distinct leases.

§ 3128.5 Extension of leases segregated by assignment.

(a) Any lease segregated by assignment, including the retained portion, shall continue in effect for the primary term of the original lease, or for two years after the date of discovery of oil or gas in paying quantities upon any other segregated portion of the original lease, whichever is the longer period.

(b) Undeveloped parts of leases retained or assigned out of leases which are in their extended term under any provision of the act shall continue in effect for two years after the effective date of assignment and so long thereafter as oil or gas is produced in paying quantities, provided the parent lease was issued prior to September 2, 1960.

(c) Undeveloped parts of leases retained or assigned out of leases which are extended by production, actual or suspended, or the payment of compensatory royalty shall continue in effect for two years after the effective date of assignment and so long thereafter as oil or gas is produced in paying quantities.

§ 3128.6 Royalty interests in oil and gas leases and assignments thereof.

Royalty interests in oil and gas leases constitute holdings or control of lands and deposits within the meaning of section 27 of the act. In order that the holdings of the assignee may be verified, all assignments of royalty interests should be filed for record purposes within 90 days from the date of execution, but no formal approval will be given. Any such assignment will be deemed to be valid provided it is accompanied by a statement over the assignee's signature that he is a citizen of the United States and that his interests in oil and gas leases do not exceed the acreage limitation as provided in § 3120.1–2 and by the statement as to overriding royalties required by § 3125.4. If any portion of this statement is found to be false the assignment shall be invalid.

Subpart 3129—Termination

§ 3129.1 Relinquishment of leases or portions thereof.

A lease or any legal subdivision thereof may be surrendered by the record title holder by filing a written relinquishment, in triplicate, in the proper land office. A relinquishment shall take effect on the date it is filed subject to the continued obligation of the lessee and his surety to make payments of all accrued rentals and royalties and to place all wells on the land to be relinquished in condition for suspension or abandonment in accordance with the regulations and the terms of the lease. A statement must be furnished that all moneys due and payable to workmen employed on the leased premises have been paid.

§ 3129.2 Cancellation and termination of lease.

(a) Any lease issued after July 29, 1954, or any lease which is extended after that date pursuant to § 3127.1 on which there is no well capable of producing oil or gas in paying quantities shall automatically terminate by operation of law if the lessee fails to pay the rental on or before the anniversary date of such lease. However, if the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely. The termination of the lease for failure to pay the rental must be noted on the official records of the appropriate Land Office. Upon such notation the lands included in such lease will become subject to the filing of new lease offers only as provided for in § 3123.9.

(b) Whenever the lessee fails otherwise to comply with any of the provisions of the act, of the regulations issued thereunder, or of the lease, such lease may be cancelled by the Secretary of the Interior if not known to contain valuable deposits of oil or gas after notice to lessee in accordance with section 31 of the act, if default continues for the period prescribed in that section after service of notice thereof. Any lessee of a lease which issued prior to July 29, 1954, may, at any time prior to the anniversary date of such lease and the accrual of rental, elect to subject his lease to the automatic termination provisions of this section by notifying, in writing, the manager of the appropriate land office to that effect.

(c) Leases known to contain valuable deposits of oil or gas may be cancelled only by judicial proceedings in the manner provided in sections 27 and 31 of the act.

This Circular replaces Circulars 2078, 2079, 2091, 2092, 2105, 2112, 2124, 2128, 2135, and 2140 and those portions of Circulars 2081 and 2085 relating to 43 CFR Part 192. Those portions of Circular 2136 relating to 43 CFR Parts 3100 and 3120 are also replaced by this Circular.

GPO 842-338

Repl. by C-2139 and C-2258

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER C—MINERALS MANAGEMENT

[Circular 2140]

PART 3100—PUBLIC DOMAIN LEASING UNDER 1920 ACT

Definitions

Paragraph (a) of section 3100.0–5 is amended to read as follows:

§ 3100.0–5 Definitions.

(a) *Sole party in interest; statement of interest.* A sole party in interest in a lease or offer to lease is a party who is and will be vested with all legal and equitable rights under the lease. No one is, or shall be deemed to be, a sole party in interest with respect to a lease in which any other party has any of the interests described in this section. The requirement of disclosure in an offer to lease of an offeror's or other parties' interest in a lease, if issued, is predicated on the departmental policy that all offerors and other parties having an interest in simultaneously filed offers to lease shall have an equal opportunity for success in the drawings to determine priorities. Additionally, such disclosures provide the means for maintaining adequate records of acreage holdings of all such parties where such interests constitute chargeable acreage holdings. An "interest" in the lease includes, but is not limited to, record title interests, overriding royalty interests, working interests, operating rights or options, or any agreements covering such "interests." Any claim or any prospective or future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues, or profits which may be derived from or which may accrue in any manner from the lease based upon or pursuant to any agreement or understanding existing at the time when the offer is filed, is deemed to constitute an "interest" in such lease.

STEWART L. UDALL,
Secretary of the Interior.

MAY 6, 1964.

[F.R. Doc. 64–4701; Filed, May 11, 1964; 8:46 a.m.]

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Repl. by C-2145

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER D—RANGE MANAGEMENT (4000)

[Circular 2141]

PART 4110—GRAZING ADMINISTRATION (INSIDE GRAZING DISTRICTS) (THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS)

Subpart 4114—Advisory Boards and Local Associations

MISCELLANEOUS AMENDMENTS

1. Section 4114.1–1 is amended to read as follows:

§ 4114.1–1 Authorization for establishment; number of members; qualifications.

The State Director shall fix the number of members to be recommended by election for appointment to the advisory board in each district, such number to be not less than five nor more than twelve, exclusive of a wildlife representative who will not be recommended by election, but shall be selected directly by the State Director. The State Director may fix the number of district advisers to be recommended by election as representatives of each class of stockman, according to the kind of livestock owned, or may fix the number to be recommended by election from each voting precinct, or both. provided that the free-use licensees in each district shall be entitled to recommend one representative who shall be a free-use licensee. All district advisers, except the wildlife representative, shall be electors qualified to vote in the particular election. If a district is divided into precincts, an adviser representing a precinct shall qualify in the precinct in the same manner as in the district.

2. Section 4114.1–2 is amended to read as follows:

§ 4114.1–2 Election, time and place; the general procedures.

All district advisers, except wildlife representatives, shall be recommended by election in the manner provided in this section, and in the General Procedures for Grazing District Advisory Board Elections as approved by the Director, Bureau of Land Management, and published in the FEDERAL REGISTER. An election to recommend district advisers for appointments for each grazing district will be held within 90 days after the publication in the FEDERAL REGISTER of the order establishing the grazing district. Persons recommended by election for appointment at the first election after establishment of a grazing district, or at the first election during the 1964 calendar year, may be recommended for appointment and annual reappointment for a maximum period of three consecutive years; or the District Manager may divide the group, by lot, as evenly as possible into three groups to be considered as being recommended for appointment or reappointment for one year, two consecutive years, or three consecutive years respectively. Thereafter, elections will be held annually, for each group whose term of recommendation for appointment has expired, in accordance with the options set forth in the General Procedures for Grazing District Advisory Board Elections.

3. Section 4114.1–3 is amended to read as follows:

§ 4114.1–3 Appointment; term of office; removal; vacancies.

A person recommended by election for appointment as district adviser shall assume office only after he has been appointed by the State Director and has taken the oath of office. The State Director may, in his discretion, appoint those in group 1 for a period not to exceed 365 days; those in group 2 for an initial period of 365 days and thereafter a subsequent like period; and those in group three for an initial period of 365

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Circular Distribution List

days and thereafter two successive like periods. The State Director may remove any district adviser from office because of failure to discharge his duties, loss of any of his qualifications to hold the office, or in the public interest. Upon a vacancy occurring in the office of the district adviser other than a wildlife representative by reason of resignation, removal, disqualification, or otherwise, the board shall recommend the name of a person to fill the vacancy and such recommendation, together with that of the District Manager, shall be transmitted to the State Director for consideration. A person selected to fill a vacancy shall be appointed for the remainder of the unexpired 365-day period, after which a person shall be recommended by election for the balance of the period of recommendation at the next regular election. The wildlife representative will be appointed by the State Director for a term of office that does not exceed 365 days.

JOHN A. CARVER, Jr.,
Acting Secretary of the Interior.

MAY 14, 1964.

[F.R. Doc. 64-4949; Filed, May 15, 1964; 8:52 a.m.]

GPO 842-055

Repl. by C-2171

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TENURE MANAGEMENT (2000)

[Circular No. 2142]

PART 2210—OCCUPANCY

PART 2220—GRANTS

Cancellation of Entry

1. A new § 2211.2–5 is added as follows:

§ 2211.2–5 Noncompliance.

Where the proof establishes that the entryman cannot effect timely compliance with the law, the entry must be canceled unless statutory authority permits the granting of an extension of time or other relief.

2. A new subparagraph (3) is added to § 2211.9–7(a) as follows:

§ 2211.9–7 Proof.

(a) Submission.

* * * * *

(3) Where the proof establishes that the entryman cannot effect timely compliance with the law, the entry must be canceled unless statutory authority permits the granting of an extension of time or other relief.

3. A new subparagraph (1) is added to § 2226.1–5(a) as follows:

§ 2226.1–5 Final proof.

(a) *General requirements.*

* * * * *

(1) Where the proof establishes that the entryman cannot effect timely compliance with the law, the entry must be canceled unless statutory authority permits the granting of an extension of time or other relief.

STEWART L. UDALL,
Secetary of the Interior.

MAY 14, 1964.

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GPO 842-213

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER A—GENERAL MANAGEMENT (1000)

[Circular No. 2143]

PART 1810—INTRODUCTION AND GENERAL GUIDANCE

Authority To Bind Government

A new section is added to Part 1810 as follows:

§ 1810.3 Effect of laches; authority to bind government.

(a) The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or agents, or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

(b) The United States is not bound or estopped by the acts of its officers or agents when they enter into an arrangement or agreement to do or cause to be done what the law does not sanction or permit.

(c) Reliance upon information or opinion of any officer, agent or employee or on records maintained by land offices cannot operate to vest any right not authorized by law.

STEWART L. UDALL,
Secretary of the Interior.

MAY 14, 1964.

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Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TENURE MANAGEMENT (2000)

[Circular No. 2144]

PART 2220—GRANTS

Subpart 2226—Desert Land Act

DEFINITIONS

1. A new § 2226.0–5 is added as follows:

§ 2226.0–5 Definitions.

(a) As used in the desert-land laws and the regulations of this subpart:

(1) "Reclamation" requires conducting water in adequate amounts and quality to the land so as to render it available for distribution when needed for irrigation and cultivation.

(2) "Cultivation" requires the operation, practice, or act of tillage or preparation of land for seed, and keeping the ground in a state favorable for the growth of crops.

(3) "Irrigation" requires the application of water to land for the purpose of growing crops.

(4) "Crop" includes any agricultural product to which the land under consideration is generally adapted and which would return a fair reward for the expense of producing it.

(5) "Water supply", to be adequate, must be sufficient to irrigate successfully and to reclaim all of the irrigable land embraced in an entry.

(6) "Water right" means the authority, whether by prior ownership, contract, purchase, or appropriation in accordance with state law, to use water on the land to be irrigated.

2. Paragraph (a) of § 2226.0–7 is amended by the addition of subparagraph (3) as follows:

§ 2226.0–7 Land subject to disposition.

(a) *Land that may be entered as desert land.*

* * * * *

(3) Land that has been effectually reclaimed is not subject to desert land entry.

* * * * *

STEWART L. UDALL,
Secretary of the Interior.

MAY 14, 1964.

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GPO 842-214

Ofr noted

Circular No. 2145

Replaced by Circ. 2190

GRAZING REGULATIONS for the PUBLIC LANDS

U.S. DEPARTMENT OF THE INTERIOR

Stewart L. Udall, Secretary

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Public Land Management

BUREAU OF LAND MANAGEMENT

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PREFACE

The regulations contained herein are applicable to the use, management, and protection of 178,000,000 acres of public land administered under the authority and provisions of the Taylor Grazing Act of June 28, 1934, as amended and supplemented.

Part 4100, Grazing Administration Inside Grazing Districts (The Federal Range Code for Grazing Districts), is applicable to the 159,000,000 acres of grazing land administered by the Bureau of Land Management's 58 grazing districts. It provides the necessary regulations pursuant to Section 3 of the Taylor Grazing Act for intensive management of the public lands.

Part 4120, Grazing Administration Outside Grazing Districts, provides regulations (pursuant to Section 15 of the Taylor Grazing Act) for the use and management of the 19,000,000 acres of leased lands that have not been included within grazing districts because of their scattered location pattern.

Subpart 9239, Trespass - Grazing, provides grazing trespass regulations, including disciplinary actions resulting from the commitment of acts prohibited and violation of the rules of fair range practice.

Subpart 1853, Hearings Procedures - Grazing, provides regulations, within districts, for the handling and processing of appeals.

These regulations now represent many modifications of the original regulations. Such amendments have been found necessary to meet more effectively the objectives of the Act by improving the orderly use of the land, preventing overgrazing and range depletion, and stabilizing the livestock industry dependent upon the public land.

The publication is a consolidation of the primary regulations used in the management of the public lands administered pursuant to the Taylor Grazing Act both inside and outside the statutory grazing districts and is intended to facilitate BLM operations.

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Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER D—RANGE MANAGEMENT (4000)

Group 4100—Grazing Administration

PART 4110—GRAZING ADMINISTRATION (INSIDE GRAZING DISTRICTS) (THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS)

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AUTHORITY: The provisions of this Part 4110 issued under sec. 2, 48 Stat. 1270, 43 U.S.C. 315a.

Subpart 4110—Grazing Administration (Inside Grazing Districts); General

§ 4110.0–2 Objectives.

Grazing districts will be administered to conserve and regulate the public grazing lands, to stabilize the livestock industry dependent upon them, and in aid thereof to promote the proper use of the privately controlled lands and waters dependent upon those public grazing lands. In furtherance of these objectives, grazing privileges will be granted with a view to the protection of those livestock operations that are recognized as established and continuing and which normally involve the substantial use of the public range in a regular, continuing manner each year. To promtoe the highest use of the public lands within grazing districts which have been or hereafter are established, possession or control of sufficient land or water to insure a year-round operation for a certain number of livestock in connection with the use of the Federal range will be required of all users.

§ 4110.0–3 Authority.

(a) *Saving clause.* So far as practicable and consistent with the purposes and provisions of the act and the basic policy and plan of administration outlined in § 4110.0–2, the provisions of this Subpart 4110 will not be applied to the prejudice of the position of anyone who on the date of approval of this part was the holder of a grazing license or permit or who on that date had pending an application therefor.

§ 4110.0–5 Definitions.

Wherever used in rules, instructions, or interpretations issued by the Bureau of Land Management in or pursuant to the Federal Range Code for Grazing Districts (this part), unless the context otherwise requires:

(a) The "act" means the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315, 315a–315r), as amended and supplemented.

(b) "The Federal Range Code for Grazing Districts" means all of the rules and regulations pertaining to the administration of grazing districts.

(c) The "Secretary" means the Secretary of the Interior or his authorized agent.

(d) The "Director" means the Director of the Bureau of Land Management or his authorized agent.

(e) "State Director" means the supervising Bureau of Land Management officer for the State in which the particular range lies, or his authorized agent.

(f) "Federal range" means land within established grazing districts administered by the Bureau of Land Management under the Federal Range Code for Grazing Districts (this part), including the vacant, unappropriated, and unreserved public land of the United States chiefly valuable for grazing and forage crops; State, county, and privately owned land leased for such administration; and lands so administered pursuant to a cooperative agreement with the Federal department or agency having jurisdiction over such land.

(g) "Property" means privately owned or controlled land or water used in range livestock operations.

(h) "Base property" means property used for the support of the livestock for which a grazing privilege is sought and on the basis of which the extent of a license or permit is computed.

(i) "Base property qualifications" means the maximum amount of grazing privileges on Federal range properly allowable to base properties in class 1 or class 2.

(j) "Forage land" means land the principal use of which is the production of natural or cultivated feed for livestock.

(k)(1) "Land dependent by use" means forage land other than Federal range of such character that the conduct of an economic livestock operation requires the use of the Federal range in connection with it and which, in the "priority period", was used as a part of an established, permanent, and continuing livestock operation for any two consecutive years or for any three years of such priority period in connection with substantially the same part of the public domain, now part of the Federal range. Such land may be (i) parallel land, i.e., land of the same character, interspersed with, and grazed at the same time as the Federal range on which grazing privileges may be granted, except in those grazing districts which by special rule have excluded parallel land as base property, (ii) land of different character than the Federal range and which properly supports the permitted livestock during

all or part of the period that the Federal range is closed to grazing, or (iii) a combination of these two types of land. The priority period shall be the five-year period immediately preceding June 28, 1934, except that if such Federal range was placed within a grazing district after June 28, 1938, or added to an existing grazing district by boundary modification after the latter date, the priority period shall be the five years immediately preceding the date of the order establishing such district or effecting such addition, as the case may be.

(2) No land shall be considered as dependent by use unless offered as base property in an application for a grazing license or permit within one year after the date when the Federal range used in creating the dependency by use first became a part of a grazing district, except that if the Federal range used in creating the dependency by use became a part of a grazing district prior to June 28, 1938, such base property shall not be considered as dependent by use unless offered in an application for a grazing license or permit filed prior to said date. Only the last set of base properties used during the priority period by a livestock operation can be invested with dependency by use by such operation.

(3) The extent to which grazing licenses or permits will be granted on the basis of dependency by use of land, shall be governed by the following:

(i) It shall not exceed the average annual amount of forage customarily and properly utilized by the livestock operation computed on the basis of any two consecutive years or any three years in which use was actually made during the priority period, whichever is more favorable to the applicant, on that part of the public land which, at the time of the issuance of the license or permit, is Federal range.

(ii) It shall not exceed the amount of forage needed for the number of livestock creating such dependency by use that were customarily and properly sustained on the base property during the priority period and continue to use such property to the same extent, except that in no instance shall the use of base property be for less than the minimum period established under § 4111.2–1. The grazing privileges which may be granted hereunder shall not exceed the amounts determined under subdivision (i) or (ii) of this subparagraph, whichever is the lesser. Where the base property provides forage in excess of that necessary for the proper support of the number of livestock used in creating the dependency by use (class 1) the base property, to the extent of such excess forage capacity, may be treated as dependent by location (class 2) if so qualified.

(iii) Whenever the dependency by use of two or more base properties was created by the use of all or part of the same Federal range, during the same or at different seasons of the year, by two or more livestock operations, the relative dependency by use of each of the base properties shall be proportionate to the average annual use actually and properly made of the Federal range during the priority period by each of the livestock operations.

(l) "Land dependent by location" means forage land other than Federal range, which is so situated and of such character that it can properly be used as a base for an economic livestock operation utilizing the forage resources of the Federal range.

(m) "Animal-unit month" means the amount of natural or cultivated feed necessary for the sustenance of one cow or its equivalent, for a period of one month; as applied to Federal range, it means also the grazing privileges represented by the grazing of one cow or its equivalent for a period of one month. For the purposes of this definition, one cow shall be considered the equivalent of one horse or five sheep or five goats; provided, however, that only for the purposes of establishing fees for grazing privileges under § 4115.2–1(k)(2), the charge for one horse grazing on the Federal range for one month shall be at twice the rate charged for one cow grazing for the same period.

(n) "Grazing capacity" means the total animal-unit months of forage available from a tract or tracts of forage land during a given period.

(o) "Full-time water" means water which is suitable for consumption by livestock and available, accessible, and adequate for a certain number of livestock during those months in the year for which the range is classified as suitable for use. Such water may be from one source or may be the aggregate amount available from several sources.

(p)(1) "Prior water" is water which, during all or not less than two years of

the priority period was used to service certain public domain now part of the Federal range for a livestock operation that was established, permanent, and continuing, and which normally involved the grazing of livestock on the same areas of public land for a certain portion or portions of the years of such use. For the purpose of this definition the priority period shall be the five-year period immediately preceding June 28, 1934, except that in any area placed within a grazing district or added to an existing district by boundary modification after September 23, 1942, the priority period shall be the five-year period immediately preceding the date of the order establishing such district or effecting such addition, as the case may be.

(2) Where a livestock operation used a water or waters during the priority period in such manner as would, in the absence of other factors, have served to invest such water with the attribute of priority, but such livestock operation subsequently ceased using such water or waters and used other water or waters in such manner as to invest them, too, with priority, only the latter water or waters shall be considered as prior, unless the former are also prior because of use by another livestock operation.

(3) No water shall be considered as prior unless offered as base property in an application for a grazing license or permit filed within one year after the public lands which were used in creating the priority first became a part of a grazing district except that when such lands became a part of a grazing district more than one year prior to March 16, 1942, a water shall not be considered as prior unless offered in an application filed prior to that date.

(4) The extent to which grazing privileges will be granted on the basis of the priority of water shall not exceed the average annual amount of forage customarily and properly utilized by the livestock operation computed on the basis of the years in which use was actually made during the priority period, on substantially that part of the public lands within the service area which, at the time of the issuance of the license or permit, is Federal range.

(q) "Service area" means the area that can be properly grazed by livestock watering at a certain water. In determining such area, natural and cultural barriers, recognized habits of livestock, proper livestock practices, and range management factors will be considered.

(r) "Adjudication of grazing privileges" is the determination of the qualifications for grazing privileges of the base properties, land § 4110.0–5 (k)(1)) or water (§ 4110.0–5 (p)(1)) offered in support of applications for grazing licenses or permits in a range unit or area, and the subsequent equitable apportionment among the applicants of the forage production within the proper grazing season and capacity of the particular unit or area of Federal range, and acceptance by the applicants of the grazing privileges based upon the apportionment or its substantiation in a decision by an examiner, the Director, or the Secretary upon appeal. (Applicable provisions are Subpart 4111, and § 4115.2–3.)

Subpart 4111—Awards of Grazing Privileges

§ 4111.1 Qualifications of applicants.

§ 4111.1–1 Qualifications.

An applicant for a grazing license or permit is qualified if engaged in the livestock business and:

(a) Is a citizen of the United States, or

(b) Has on file before a court of competent jurisdiction a valid declaration of intention to become a citizen or a valid petition for naturalization, or

(c) Is a group, association, or corporation authorized to conduct business under the laws of the State in which the grazing privileges sought are to be exercised, and the controlling interest in which is vested in persons who would be qualified as individual applicants under paragraphs (a) or (b) of this section.

§ 4111.1–2 Effect of transfer arising through operation of law.

The acquisition of rights in base property by an unqualified person through operation of law or testamentary disposition will not adversely affect any outstanding license or permit, or preclude the issuance or renewal of a license or permit, based on such property, for a period of two years after such acquisition. Upon the failure of such person to qualify within the two year

period the license or permit will be subject to cancellation in accordance with § 4115.2–1(d).

§ 4111.2 Base property qualifications and classification.

§ 4111.2–1 Minimum requirements; classification of base properties.

(a) The District Manager, after recommendation by the advisory board, shall establish minimum base property requirements as a condition of qualification for the issuance of a license or permit in each district or unit thereof, taking into consideration the availability of base properties for proper use with and their relative dependence upon Federal range, land and water conditions, and other factors affecting livestock operations in the area according to customary use and best practices for good range management.

(b) The District Manager after recommendation by the advisory board will classify base properties as land or water and further in the following manner:

Class 1. Land dependent by use, or full-time prior water.

Class 2. Land dependent by location, or full-time water.

§ 4111.3 Adjudication and apportionment of grazing privileges.

§ 4111.3–1 Mandatory requirements; rating and classification of Federal Range.

(a) *Grazing capacity; seasons and maximum annual period of use.* The District Manager, after recommendation by the advisory board, will rate the grazing capacity of each unit or area in a grazing district and will classify each for the proper seasons of use and for the maximum period of time for which any licensee or permittee will be allowed to use the Federal range therein during any one year.

(b) *Wildlife; allowance for maintenance.* In each grazing district a sufficient grazing capacity of Federal range suitable for wildlife will be reserved by the District Manager after consulting with wildlife interests and the advisory board, for the maintenance of a reasonable number of wild game animals, to use the range in common with livestock grazing in the district.

(c) *Preference applicants.* Preference in the granting of grazing privileges will be given to those applicants within or near a district who are landowners engaged in a livestock business, bona fide occupants or owners of water or water rights, as may be necessary to permit the proper use of lands, water, or water rights owned, occupied, or leased by them. When the demands of all such preference applicants cannot be satisfied, prior consideration will be given applicants in the manner specified in paragraph (d) of this section. Provision will be made for other applicants so far as Federal range remains available.

(d) *Order of preference.* Licenses or permits will be issued in the following order:

(1) *Free-use licenses.* A free-use license will be issued to any free-use applicant for grazing on Federal range in the immediate neighborhood of the applicant's residence for not to exceed the number of livestock owned and kept by him for domestic purposes, that is, livestock whose products are consumed or whose work is directly and exclusively used by the family of the applicant, provided the free-use applicant has adequate facilities for the proper care and maintenance of such domestic livestock on the Federal range.

(2) *Regular licenses and permits; number of livestock.* Regular licenses and permits will be issued to qualified applicants to the extent that Federal range is available in the following preference order and amounts:

(i) To applicants owning or controlling land in class 1, licenses or permits to the extent of the dependency by use of such land; to applicants owning or controlling water in class 1, licenses or permits to the extent of the priority of such water.

(ii) To applicants owning or controlling land or water in class 2, licenses or permits for the number of livestock for which range is available and which can be properly grazed in connection with a livestock operation which involves the use of such land or water.

§ 4111.3–2 Procedures.

(a) *Unit-wide or area-wide adjudication.* (1) The District Manager, after recommendation by the advisory board, may make a simultaneous classification under § 4111.2–2 of all offered base properties within a single administrative unit

or grazing area and may allocate in a single action the available Federal range within the unit or area upon which such base properties are dependent.

(2) The District Manager shall give written notice by certified mail of such classification and allocation to the persons offering such base properties, naming a place and date not less than 30 days thereafter to file protest to the advisory board, in accordance with § 4115.2–1(b). Thereafter, and provided there is then pending a valid application for grazing privileges, the District Manager will render his final decision thereon and will allow the right of appeal to the examiner in accordance with § 4115.2–3.

(b) *Permits; annual licenses.* Grazing permits may be issued as soon as the necessary data can be obtained or after agreements as to the extent of their individual grazing privileges have been reached by the interested applicants and such agreements have been reduced to writing; a recommendation thereon made by the advisory board, and approval thereof given by the District Manager. No such agreement will be approved unless it appears that it is fair and that it represents a substantial compliance with the provisions of the Federal Range Code for Grazing Districts, and no applicant shall be prejudiced by his failure or refusal to enter into such an agreement. The practice of issuing an annual license will be continued until such time as a permit is issued. Upon the issuance of a permit any outstanding license or part thereof which has been granted on the same qualifications on which the permit is based will terminate. Upon expiration of a term permit an annual license may be issued, pending issuance of a new term permit.

(c) *Allotments.* Allotments of Federal range will be made to licensees or permittees when conditions warrant. Division of the range by agreement or former practice will be followed where practicable, provided such division is in substantial conformity with the qualifications for grazing privileges of the respective applicants and the agreement is reduced to writing and approved by the District Manager.

(d) *Administration of lands additionally available; preference right for lands restored from withdrawal.* (1) Any land within the exterior boundaries of a grazing district made available for administration by the Bureau of Land Management, by a lease under the Pierce Act of June 23, 1938 (52 Stat. 1033; 43 U.S.C. 315M–1—315M–4), by the revocation of a withdrawal, or by the cancellation or relinquishment of a homestead entry or claim, or otherwise, after the grazing privileges in the area embracing the land have been adjudicated, will be administered in accordance with customary use so far as such administration may be practicable and consistent with good range management.

(2) Where public lands are restored from withdrawal and the District Manager determines that the lands are available for grazing use, the party using such lands or part thereof for grazing purposes under authority of the agency which had jurisdiction over the lands immediately prior to their restoration, shall have a superior preference to the further grazing use of such lands. The preference right must be asserted and an application for license or permit, on a form approved by the Director obtainable from the District Manager must be filed with that officer not more than 90 days after the date of signing of the order of revocation of the withdrawal, or not more than 90 days after the end of the current lease year under which the land is being used, whichever is the later. The application must be accompanied by a copy of the prior lease, license, permit or other authority upon which the preference claim is based. The District Manager may issue to such applicant an annual license or a term permit as he shall determine, authorizing such grazing use subject to the applicable regulations in this part. (Sec. 1, act of May 28, 1954 (68 Stat. 151), as interpreted and applied to sec. 3, Taylor Grazing Act. 43 U.S.C., 1952 ed., sec. 315(h).)

§ 4111.4 Adjustments of grazing privileges.

§ 4111.4–1 Increase.

Increases in grazing capacity, when conditions warrant, and after recommendation of the advisory board and approval of the District Manager, will be apportioned in a manner that will assist in the stabilization of livestock operations controlling qualified base property, with emphasis being given to the restoration of reductions that have

been imposed to reach the grazing capacity of a particular allotment or range area, and to allocation of increased grazing capacity to operators or interests whose efforts were responsible for such increases.

§ 4111.4–2 Reduction.

(a) If necessary to reach the grazing capacity of any area of the Federal range after licenses or permits have been issued, reductions of grazing privileges applicable to such area shall be made in the following order:

(1) Nonrenewable licenses.

(2) Regular licenses or permits to the extent, if any, to which they are in excess of the base property qualifications or having been otherwise improperly issued.

(3) Regular licenses or permits properly issued, on an equal percentage basis.

(b) Such reductions may be made either by reducing the number of livestock or the time on the Federal range involved, or by both methods, as determined by the District Manager after recommendation by the advisory board.

(c) When the District Manager, after recommendation by the advisory board, determines that the imposition of the full amount of certain reductions in grazing privileges from current licensed or permitted use necessary to reach the grazing capacity of a range area would impose a serious hardship on the range users, he is not required to impose the full amount of the reduction forthwith, but will then schedule a percentage of the required reduction during each of the three years immediately following the determination as the circumstances of each case may warrant, except when the total reduction is less than fifteen percent it may not be so scheduled but will be imposed forthwith in the full amount.

(d) The District Manager will notify each affected licensee or permittee by certified mail of his decision to make a reduction in grazing privileges to reach the grazing capacity of any Federal range area and of the manner in which the reduction is to be made. The District Manager's decision notice will allow thirty days from receipt thereof in which to file any desired appeal in accordance with § 4115.2–3. If no appeal is filed within the thirty-day period, the reduction will be made in accordance with the District Manager's decision, and no further appeal will be allowed even though the reduction may be scheduled under paragraph (c) of this section to cover a period of time up to three years. If any timely appeal is filed after receipt of the District Manager's decision notice, the reduction for the entire Federal range area under consideration will be deferred pending the completion of the appeal and hearing procedure. Any reduction provided by the ultimate decision will be applied to its full extent immediately after the effective date of that decision. If, however, the final decision on appeal is rendered within the three-year reduction period established by the decision notice of the District Manager, the required adjustment may be apportioned over the remaining portion of that period. In the event that the orderly administration of the range or other public interest so requires, any decision may be placed in full force and effect in accordance with the provisions of § 4115.2–3(i)(2).

(e) When the District Manager determines that the potential grazing capacity, with improvements, of a Federal range area is significantly greater than the present grazing capacity, he may, after obtaining advice from the advisory board, issue a current license for active use not to exceed the animal unit months of forage presently available, and issue a non-use license for the difference between the use allowable by the limits of the present grazing capacity and the potential. This difference will be held in a suspense status as reflected in the non-use portion of the license, provided that the aggregate of active and non-use privileges shall not exceed the extent of the base property qualifications of the licensee or permittee. Thereafter, when the District Manager determines that a significant portion of the potential grazing capacity has been attained, he may increase the active authorized use under the license or permit to that extent.

(f) Federal range lands to be used under a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, and to withdrawal, appropriation, selection, or other disposal under the public land laws. Reasonable notice of a pending or

proposed classification, withdrawal or other disposal which might result in a diminution of the available Federal range will be given to the licensee or permittee of such lands, consistent with subpart 2412 of this chapter, and subject to the right of protest or appeal to the Director and to the Secretary of the Interior as may be provided in such notice and the rules of practice, Parts 1840 and 1850 of this chapter.

Subpart 4112—Management Practices

§ 4112.2 Designation of ranges for particular kinds of livestock.

The District Manager may designate certain areas for use exclusively by a certain kind or class of livestock when necessary for the proper use or orderly administration of the Federal range.

§ 4112.3 General rules of the range.

§ 4112.3–1 Acts prohibited.

The following acts are prohibited on the Federal range:

(a) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across the Federal range, including stock driveways, without an appropriate license or permit, regular or free-use, or a crossing permit.

(b) Grazing livestock upon or driving livestock across the Federal range, including stock driveway, in violation of the terms of a license or a permit, either by exceeding the number of livestock permitted, or by allowing livestock to be on the Federal range in an area or at a time different from that designated, or in any other manner.

(c) Constructing or maintaining any kind of improvements, structures, fences, or enclosures on the Federal range, including stock driveways, without authority of law or a permit.

(d) Destroying, molesting, disturbing, or injuring property used or acquired for use by the United States in the administration of Federal range, including stock driveways, or improvements constructed or maintained under section 4 of the act.

(e) Cutting, burning, or removing vegetative cover, brush, woodland growth, or timber for any purpose, except as authorized by law. Permits to carry on controlled burning of vegetative cover or brush may be issued by the District Manager in proper cases, subject to such conditions as he may impose, and to all State laws and regulations concerning such burning.

(f) Molesting or driving from the Federal range without authority livestock lawfully grazing thereon under license or permit.

(g) Interference with licensed hunters or fishermen to enter, and hunt and fish on the Federal range covered by such license or permit; or with the entrance of miners, prospectors and mineral lessees of the United States to prospect, locate, develop, mine or patent the mineral resources on such Federal range; or with other persons entitled to enter such range for lawful purposes.

§ 4112.3–2 Rules of fair range practice.

All licensees and permittees shall comply with the following rules of fair range practice:

(a) The statutory provisions of the State in which the Federal range or stock driveway to be used is located relating to the branding of livestock and sanitary requirements shall be followed.

(b) A crossing permittee shall follow the route prescribed in the crossing permit at an average rate of not less than five miles per day for sheep or goats and ten miles per day for cattle or horses, but an increased or decreased rate of travel may be prescribed in the discretion of the District Manager.

(c) All licensees and permittees shall provide adequate salt on the range for their licensed or permitted livestock, and shall bed sheep and goats according to instructions issued by the District Manager. Upon request by the majority of the users of any community allotment of Federal range, the District Manager may prescribe the time for, breed, grade, and number of bulls to be turned into such allotment; in the absence of such express requirements the provisions of State law on the subject shall be applicable.

(d) When so requested by the State Director or District Manager, the licensee or permittee shall join with the Bureau of Land Management in preparing a fire plan which shall set forth in detail the program for prevention, control, and extinguishment of fires, including the responsibility of the licensee or permittee for action on his range allotment and on adjacent Federal range.

Subpart 4113—Supervision and Inspection

§ 4113.1 Procedure for enforcement of rules and regulations.

A grazing license or permit may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the license or permit, or for a violation of the act or of any of the provisions of this part, or of any approved special rule. (Refer to § 9239.3–2 of this chapter for detailed enforcement procedures.)

Subpart 4114—Advisory Boards and Local Associations

§ 4114.1 Grazing district advisory boards.

§ 4114.1–1 Authorization for establishment; number of members; qualifications.

The State Director shall fix the number of members to be recommended by election for appointment to the advisory board in each district, such number to be not less than five nor more than twelve, exclusive of a wildlife representative who will not be recommended by election, but shall be selected directly by the State Director. The State Director may fix the number of district advisers to be recommended by election as representatives of each class of stockman, according to the kind of livestock owned, or may fix the number to be recommended by election from each voting precinct, or both, provided that the free-use licensees in each district shall be entitled to recommend one representative who shall be a free-use licensee. All district advisers, except the wildlife representative, shall be electors qualified to vote in the particular election. If a district is divided into precincts, an adviser representing a precinct shall qualify in the precinct in the same manner as in the district.

§ 4114.1–2 Election, time and place; the general procedures.

All district advisers, except wildlife representatives, shall be recommended by election in the manner provided in this section, and in the General Procedures for Grazing District Advisory Board Elections as approved by the Director, Bureau of Land Management, and published in the FEDERAL REGISTER. An election to recommend district advisers for appointments for each grazing district will be held within 90 days after the publication in the FEDERAL REGISTER of the order establishing the grazing district. Persons recommended by election for appointment at the first election after establishment of a grazing district, or at the first election during the 1964 calendar year, may be recommended for appointment and annual reappointment for a maximum period of three consecutive years; or the District Manager may divide the group, by lot, as evenly as possible into three groups to be considered as being recommended for appointment or reappointment for one year, two consecutive years, or three consecutive years respectively. Thereafter, elections will be held annually, for each group whose term of recommendation for appointment has expired, in accordance with the options set forth in the General Procedures for Grazing District Advisory Board Elections.

§ 4114.1–3 Appointment; term of office; removal; vacancies.

A person recommended by election for appointment as district adviser shall assume office only after he has been appointed by the State Director and has taken the oath of office. The State Director may, in his discretion, appoint those in group 1 for a period not to exceed 365 days; those in group 2 for an initial period of 365 days and thereafter a subsequent like period; and those in group three for an initial period of 365 days and thereafter two successive like periods. The State Director may remove any district adviser from office because of failure to discharge his duties, loss of any of his qualifications to hold the office, or in the public interest. Upon a vacancy occurring in the office of the district adviser other than a wildlife representative by reason of resignation, removal, disqualification, or otherwise, the board shall recommend the name of a person to fill the vacancy and such recommendation, together with that of the District Manager, shall be transmitted to the State Director for consideration. A person selected to fill a vacancy shall be appointed for the remainder of the unexpired 365-day period,

after which a person shall be recommended by election for the balance of the period of recommendation at the next regular election. The wildlife representative will be appointed by the State Director for a term of office that does not exceed 365 days.

§ 4114.1–4 Meetings; organization.

District advisory boards shall meet at any time and place within or near the district designated by the State Director or his authorized representative. At the first meeting of the board after an election, it shall organize by electing one of its members as chairman and such other officers from its membership as it may deem necessary. Meetings of a district advisory board shall be open to the public except that, with the approval of the Bureau representative present, it may meet in executive session to consider applications for the granting of licenses or permits or any other business.

§ 4114.1–5 Functions and duties of district advisers; limitations.

District advisers shall advise or make recommendations on the following matters:

(a) The qualifications, classification, and requirements of base property.

(b) The transfer and relinquishment of base property qualifications.

(c) The grazing capacity of the Federal range in the district.

(d) Applications for all types of grazing licenses or permits, including nonuse, or extension of use, except applications of district advisers.

(e) Cancellation of grazing licenses or permits when related to: failure to use base property, loss of all or part of lands used in year-round operation, range depletion, failure to offer base property or to validate a license or permit, or failure to use grazing privileges.

(f) Agreements as to the extent of individual grazing privileges, when such agreements have been reduced to writing and found to be equitable and in substantial compliance with the provisions of this part.

(g) Variance in range improvement fees in accordance with the character and requirements of the district or portions thereof.

(h) Requirements for unit or allotment boundary fences and apportionment of costs between the benefiting licensees or permittees.

(i) Proper rules of fair range practice.

(j) Allotments of range by classes of livestock or for community or individual use.

(k) Seasonal use of the Federal range or any part thereof.

(l) Cooperative agreements or application for the construction or maintenance of improvements on the Federal range under section 4 of the act and assignments thereof.

(m) Work plans under the range improvement, weed control or soil and moisture conservation programs.

(n) Any recommendations made by local associations of stockmen in the district.

(o) Reservations of grazing capacity of Federal range for wild game animals, including any agreements in connection therewith proposed for execution with State or Federal wildlife agencies.

(p) Special rules for the district, within meaning of § 4115.2–4.

(q) Any other matter which they may desire to bring to the attention of the Director, or on which their advice may be requested.

§ 4114.2 State advisory boards.

§ 4114.2–1 Membership and meetings.

The livestock members of each grazing district advisory board shall select from their number at the first meeting of the board after each election, two members and two alternates to serve on a State advisory board for the State in which the district is located; where the district advisory board has representation for cattle and horses, and sheep and goats, then only one representative and one alternate representing each class shall be selected. The wildlife members of the advisory boards within each State will select one of their number and one alternate to serve as a wildlife member on the State advisory board. In addition, the State advisory board will have one or more additional members, but not exceeding seven, who will represent other interests such as forestry, minerals, soil conservation, outdoor recreation, urban and suburban development, county government, and State government. Such additional members and their alternates will be selected by the State Director from nominations made by State or local government officers or organizations reflecting nonlivestock interests in the management or disposition of public lands. The time and place for meetings of the

State advisory board shall be set by the State Director. The board shall select from its members one member to be chairman of the board. The co-chairman of the board shall be the State Director.

§ 4114.2–2 Functions and duties.

The State advisory boards shall consider and make recommendations on grazing, wildlife, forestry, outdoor recreation, minerals, soil conservation, urban and suburban development, and other resource administration policies or problems affecting the State as a whole. The operations of the State boards, including their meetings shall conform to the committee management requirements of the Secretary of the Interior as set forth in the Departmental Manual.

§ 4114.3 National Advisory Board Council.

§ 4114.3–1 Membership and meetings.

The livestock members of each State advisory board shall select from their number, at its first meeting of each new term, one member and one alternate representing cattle and horses, and one member and one alternate representing sheep and goats, to serve on the National Advisory Board Council. The elected wildlife member or his alternate on each State advisory board will serve on the National Advisory Board Council representing wildlife interests. The State Director from each of the ten Western States with organized grazing districts shall submit a list of nominees, selected from the nonlivestock and nonwildlife membership on the State board. From this list, and other sources as he may determine, the Secretary of the Interior or his authorized representative shall appoint members, not exceeding ten in number, to the National Advisory Board Council to represent nonlivestock and nonwildlife interests. In addition to the above membership, one member from each of the States of Alaska and Washington will be appointed by the Secretary of the Interior or his authorized representative from a list submitted by the respective State Directors pursuant to nominations made by State or local government officers or organizations reflecting interests in grazing or other uses of public lands. The Council shall select from its members one member to be chairman of the Council. The co-chairman of the Council shall be an official of the Department of the Interior appointed by the Secretary of the Interior who shall set the time and place for such meetings of the National Advisory Board Council.

§ 4114.3–2 Functions and duties.

The National Advisory Board Council shall consider and make recommendations on policies and problems of a national scope related to all natural resource use and management. The operations of the National Council, including their meetings, shall conform to the committee management requirements of the Secretary of the Interior as set forth in the Departmental Manual.

§ 4114.4 Local associations of stockmen.

§ 4114.4–1 Organization.

Qualified applicants for grazing licenses or permits in any grazing district may organize a local association, or several associations, according to classes of livestock, or by community of interest or otherwise.

§ 4114.4–2 Articles of incorporation; constitutions; by-laws.

Such associations shall be organized as corporations "not-for-profit", if permissible under the laws of the State in which the grazing district, or the greater part thereof, is situated; or they may be organized as cooperative unincorporated associations. In either case the articles of incorporation, the charters, or the constitutions of such associations shall be submitted to the State Director for approval before the association may be recognized by the Bureau. The by-laws of such associations need not be submitted but in any instance which they are in conflict with the provisions of this part or the terms of any license, permit, or cooperative agreement issued to or made with an association, the latter shall prevail.

§ 4114.4–3 Powers.

Such local association shall be authorized to exercise one or more of the following powers, to be specifically set forth in the articles of incorporation, charter, or constitution, as the case may be, of such association:

(a) To make contributions in cash,

property, material or labor toward the administration, protection, and improvement of the Federal range lying within the district.

(b) To construct and maintain fences, wells, reservoirs, and other improvements necessary to the care and management of the livestock grazed in the district under permit issued by the Bureau.

(c) To act in an advisory capacity in the administration of the Federal range lying within the district.

(d) To recommend the amount, manner of apportionment, time, and method of collection of assessments for strictly association purposes, as well as for the public purposes, contemplated by the act.

(e) To enter into cooperative agreement for any of the foregoing purposes or for any other purposes authorized by the act. In addition, the association's powers may include, among others, the power to lease or otherwise acquire the control of State, county, privately owned, tax default, or other lands within or near a district.

§ 4114.4–4 Cooperative agreements for use of lands; obligation of licenses and permittees to share cost.

Whenever the grazing capacity of Federal range is increased whether by reason of the acquisition of control of any lands by the Bureau or otherwise, through a cooperative agreement with a local association, any licensee or permittee benefiting thereby, whether a member of the association or not, shall pay to the association his proportionate share of the cost of the association lands and of the cost of installation, development, and maintenance of range improvements, including reseeding, plus any authorized association assessments for other expenses. Such share shall be determined by the District Manager after consideration of the recommendation of the association. The District Manager may refuse to issue a license or permit to any applicant or may cancel or refuse to renew the license or permit of any licensee or permittee to graze on any lands covered by such agreement, whether public or association lands, and whether or not such applicant, licensee, or permittee is a member of the association, if he fails or refuses to pay to the association any of the foregoing charges.

Subpart 4115—Records and Administrative Procedures

§ 4115.2 Procedures.

§ 4115.2–1 License and permit procedures; requirements and conditions.

(a) *Filing and consideration of applications; interdistrict agreements; recommendations; service of notice.* (1) Each year a date will be set by the District Manager prior to which all applications for grazing licenses or permits in the district must be filed in his office; applications filed on or after such date may be rejected for that year unless satisfactory justification for the belated filing is shown.

(2) Applications for grazing licenses or permits will be considered first by the advisory board of the district in which the Federal range is located, except that applications of district advisers will be considered first by the District Manager, without reference to the advisory board.

(3) Where a grazing area or unit is located in one district, but is administered by the District Manager of an adjacent district pursuant to a formal interdistrict agreement, applications for grazing licenses or permits on such area or unit shall be filed with the District Manager of the adjacent district. The advisory board of the district in which the land is actually located may designate one or more of its members, on its behalf, in cooperation with the advisory board of the adjacent district, to make appropriate recommendations to the District Manager of the adjacent district with respect to such applications.

(4) The advisory board will make its recommendation to the District Manager and, if such recommendation is to any extent adverse, it shall set forth the reasons therefor. If such recommendation is favorable and the District Manager approves, he will notify the applicant by ordinary mail, which notice may be the fee billing. If the advisory board recommendation is favorable but the District Manager disagrees, notice will be served on the applicant in person or by certified mail sent to his address of record, setting forth the recommendation of the advisory board and the Manager's disapproval, together with the reason or reasons for a prospective adverse decision, including a reference to

the pertinent sections or provisions of the Federal Range Code for Grazing Districts in which the application is deficient, and naming a date, not less than ten days thereafter, on or before which oral or written protest may be presented to the District Manager. If the recommendation of the board is to any extent adverse, notice will be served on the applicant in person or by certified mail sent to his address of record, setting out the reason or reasons given by the advisory board for the adverse recommendation, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts in which the application is deficent, and naming a place and date, not less than ten days thereafter, when protest against the recommendation will be heard. The District Manager may also serve notice on any other applicant or applicants who may be directly affected by the adoption of the advisory board recommendation or the prospective decision of the Manager which will allow an appropriate protest. In any case where consideration of an application involves only issues previously adjudicated involving the same applicant or his predecessors in interest, the same base property and the same area of use, the advisory board may recommend that a protest meeting not be held, whereupon the District Manager may accept the recommendation of the board as its final consideration.

(b) *Protests; reconsideration by advisory boards; service of notice.* At the time and place fixed for the protest meeting, any licensee, permittee, or applicant may appear, in person or by attorney or other representative, or may file a written protest with the advisory board, which thereupon will reconsider its previous recommendation in the light of the protest and will make a final recommendation to the District Manager. If such recommendation is favorable to the protestant, and the District Manager approves, he will notify the protestant thereof by ordinary mail, which notice may be the fee billing. If the recommendation is to any extent adverse, and the District Manager approves, a notice giving the reason or reasons therefor will be served on the protestant in person or by certified mail, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts that serve as controlling factors. Such notice will constitute the District Manager's final decision for purposes of appeal.

(c) *Allowance or rejection of application; modification; service of notice.* The District Manager, in the light of all facts and circumstances and after reference to the advisory board, may issue or refuse to issue a grazing license or permit. When the District Manager takes an adverse action on any application, a notice including a recital of the specific reasons for the action taken will be served on the applicant in person or by certified mail. The notice will advise the applicant of his privilege to appeal to an examiner.

(d) *Cancellation or reduction of licenses or permits; show cause; appeal to examiner.* Licenses or permits are subject to cancellation or reduction to the extent that they have been improperly issued, or to the extent that their continued effectiveness is adversely affected pursuant to any of the provisions of §§ 4111.1, 4115.2–1(e), 4115.2–1(k)(4), 4114.4–4 or 4115.2–5(a)(6). Except as otherwise specifically provided, in any such case or in any case in which it shall appear that a license or permit confers grazing privileges in excess of those properly allowable under this part, the District Manager will notify the licensee or permittee that the license or permit is thereby held for cancellation or reduction either in whole or in part, as the case may be, and that the licensee or permittee will be allowed fifteen days from receipt of notice within which to show cause why such action should not be made final. Such notice will set forth fully the reasons for the proposed action, specifically referring to the pertinent provisions of this part, and will be served on the licensee or permittee by certified mail or in person. In case of failure of the licensee or permittee to show cause within the time allowed, the license or permit will be canceled or reduced to the extent indicated in the notice. The District Manager will consider any cause shown and, if satisfied of its sufficiency, will close the case; if not satisfied as to its sufficiency, or if no cause is shown, he will notify the licensee or permittee in person or by certified mail that the cancellation or reduction will become final unless an appeal to the examiner is filed in accordance with § 4115.2–3(a).

(e) *Terms and conditions.* The issuance and continued effectiveness of all regular licenses and permits will be subject to the following terms and conditions:

(1) The possession or control by the applicant, licensee, or permittee, of feed and forage supplies adequate, with the authorized Federal range use, to support his licensed or permitted livestock for a full year-round operation.

(2) No license or permit will provide for the grazing livestock on the Federal range during that part or parts of the year for which the Federal range has not been classified as proper for use.

(3) No license or permit will confer grazing privileges in excess of the grazing capacity of the Federal range to be used, as determined by the District Manager, except as may be allowed under § 4111.4–2 (c) and (e).

(4) So far as consistent with proper range practices, licenses and permits will confer grazing privileges on the range lands which were used in creating the dependency by use or priority of the base properties involved.

(5) In the event of range depletion resulting from drought or other causes, the grazing privileges that may be exercised under any license or permit may be reduced in whole or in part, and for such period of time as may be necessary.

(6) Upon the diminution of the Federal range to be used under any license or permit due to withdrawal, appropriation, selection, or otherwise, the license or permit may be reduced proportionately to the reduction in available grazing capacity caused by the loss of such Federal range.

(7) If a licensee or permittee for two consecutive years ceases to make substantial use of his base property in connection with his year-round livestock operation, the authorized use under such license or permit and the qualifications of the base property may be subject to reduction in proportion to the diminished use of the base property.

(8) If a licensee or permittee loses ownership or control of:

(i) All or part of his base property, the license or permit, to the extent it was based upon such lost property, shall terminate immediately without further notice from the District Manager; except that, if the licensee or permittee notifies the District Manager, in writing, of such loss within thirty days from the date thereof, such license or permit shall terminate to that extent at the end of the grazing season or grazing year as the District Manager shall determine; or

(ii) All or part of such other lands or grazing privileges as are necessary to his year-round operation, the license or permit will be subject to reduction in proportion to the loss of such necessary lands or grazing privileges unless the licensee or permittee notifies the District Manager within 30 days after such loss and thereafter within the time allowed by the District Manager after recommendation by the advisory board acquires ownership or control of other lands or grazing privileges sufficient to assure a year-round operation.

(9) Base property qualifications, in whole or in part, will be lost upon the failure for any two consecutive years:

(i) To include in an application for a license or permit or renewal thereof, the entire base property qualifications for active, nonuse, or combination of active and nonuse, except where the base property qualifications are included in an outstanding current term permit, or where the allowable use has been reduced under § 4111.4–2 (a)(3), (c), and (e).

(ii) To accept a license or permit issued pursuant to such application.

(10) The failure for any two consecutive years to make substantial use as determined by the District Manager, after reference to the advisory board, of all or part of the grazing privileges authorized under a license or permit, may result in the revocation thereof and in the proportionate loss of the base property qualifications.

(11) Nonuse, in whole or in part, of grazing privileges under a license or permit may be authorized by the District Manager, upon application by the licensee or permittee, after reference to the advisory board, for the following reasons: conservation and protection of the Federal range, annual fluctuations in livestock operations, or financial or other reasons beyond the control of the licensee or permittee.

(12) A revocation of a license or permit in whole or in part may result in a proportionate loss of the base property qualifications supporting such license or permit.

(13) (i) No readjudication of any license or permit, including free use li-

cense, will be made on the claim of any applicant or intervener with respect to the qualifications of the base property, or as to the livestock numbers or seasons of use of the Federal range allotment where such qualifications or such allotment has been recognized and license or permit has issued for a period of three consecutive years or more, immediately preceding such claim.

(ii) The Bureau of Land Management may make adjustments in licenses and permits at any time when necessary to comply with the Federal Range Code for Grazing Districts.

(14) Where Federal range is allotted for the exclusive grazing use of one or more users, the District Manager, if the proper use or orderly administration of the range makes it necessary:

(i) May require the licensee(s) or permittee(s), as a condition to the granting and continued effectiveness of grazing licenses or permits, to fence or to contribute an equitable share to the cost of fencing the allotted areas, and of maintenance of such fences;

(ii) May require any licensee or permittee who will benefit in some substantial measure from such fence construction, as a condition to the renewal of an existing license or permit, likewise to pay or to reimburse an equitable share of the cost of such fence construction and maintenance. The amount of such share may be established by agreement of the parties, or, upon their failure to agree, by determination of the District Manager.

(iii) May take necessary action to enforce the requirements under subdivisions (i) and (ii) of this subparagraph, in accordance with the provisions of paragraph (d) of this section.

(f) *Interest of Member of Congress prohibited.* No Member of or Delegate to Congress shall be admitted to any share or part of any license or permit issued under the act, or to derive any benefit to arise therefrom. (41 U.S.C. sec. 22; 18 U.S.C. secs. 431–433.)

(g) *Change in grazing seasons.* Any licensee or permittee who desires to use the Federal range for a period or periods other than as authorized by his license or permit may, upon written approval of the District Manager, be allowed to use the amount of his authorized grazing privileges during any period of time for which the Federal range is classified as proper for use, provided:

(1) The total of such use does not exceed the maximum amount of time for which any licensee or permittee is allowed to use the Federal range during any one grazing year;

(2) The number of animal-unit months of Federal range to be utilized is not thereby increased;

(3) Such use will not be detrimental to the Federal range, and

(4) Such use will not adversely affect other licensees or permittees.

(h) *Exchange of use licenses.* Exchange of use licenses may be issued to any applicant having ownership or control of non-Federal land interspersed and normally grazed in conjunction with the surrounding Federal range for not to exceed the grazing capacity of such non-Federal land, without payment of grazing fees, provided that during the term of the license the Bureau shall have the management and control of such non-Federal land for grazing purposes.

(i) *Nonrenewable licenses.* Nonrenewable licenses may be issued to nonpreference applicants only for the period specified by the District Manager and for the number of livestock for which range is temporarily available and which can be properly grazed without detriment to the operations on the range of applicants owning or controlling base properties in class 1 and class 2.

(j) *Suspension of licenses and permits under Soldiers' and Sailors' Civil Relief Act of 1940.* Any licensee or permittee who enters military service, as defined in section 101(1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1179; 50 U.S.C. App. 511(1)), may elect at the beginning of or at any time during the period of such service to suspend his license or permit, in whole or in part, for such period and six months thereafter, subject to the following:

(1) The licensee or permittee shall file with the District Manager an application, in duplicate, setting forth the facts and circumstances upon which the application for suspension of the license or permit is based. If the applicant desires the suspension of a license or permit in more than one district, a separate application shall be filed with the District Manager for each district.

(2) Upon the approval of the application the suspension shall be effective for the period involved, unless sooner termi-

nated upon further application to the District Manager by the licensee or permittee, and no operations under the license or permit to the extent suspended shall be conducted during such period.

(3) No grazing fees will be assessed under a license or permit to the extent and during the period it is suspended and, upon the approval of an application for suspension, any fees that have been paid for the period of suspension will be refunded and any fees that are or may become due for such period will be remitted.

(4) A special temporary license, to the extent of any grazing privileges suspended, may be issued to another applicant for not to exceed the period of such suspension, but upon the termination of the suspension, either by reason of the expiration of the six months' period following the conclusion of the first licensee's or permittee's military service or by reason of an application by the first licensee or permittee for an earlier termination, or otherwise, such temporary license shall terminate as of the beginning of the grazing period next following the termination of the suspension.

(5) No suspension granted hereunder shall entitle a licensee or permittee to any greater privileges subsequently than those to which he would have been entitled in the absence of a suspension.

(6) Any adverse action by the District Manager on an application for suspension of a license or permit under this paragraph may be appealed by the licensee or permittee to the Director, and from the Director to the Secretary of the Interior, in accordance with the rules of practice, Part 1850 of this chapter.

(k) *Fees for grazing licenses and permits*—(1) *Free-use licenses.* No fee will be charged for the issuance of a free-use license.

(2) *Licenses and permits; rates.* (i) Each regular licensee or permittee, and holder of a nonrenewable license will be charged fees, consisting of a grazing fee for use of the range and a range improvement fee, for the animal unit months authorized by the license or permit, at a rate per animal unit month. All billing shall be issued in accordance with the rates prescribed in subdivision (ii) of this subparagraph. All livestock 6 months of age or over allowed on the Federal range will be considered at any point of time during the grazing period as a part of the total number for which a license or permit has been issued. No fees will be charged for livestock under 6 months of age. Range improvement fees may vary in accordance with the character or requirements of the various districts or portions thereof. Grazing fees may differ in any district or unit thereof in which the grazing capacity of the Federal range is increased by reason of the addition of land not owned by the United States, or by reason of a cooperative agreement or memorandum of understanding between the Bureau of Land Management, and any State or Federal agency, or any person, association, or corporation. A minimum annual charge of $10 will be made on all regular licenses or permits, and nonrenewable licenses.

(ii) (*a*) The fee or fees for any fee year, beginning on March 1, will be established by the Secretary at a rate which is equivalent to a specified percentage, to be fixed by the Secretary, of the average of the prices per pound of beef and lamb, rounded to the nearest whole cent, which was paid to growers during the preceding calendar year in the markets of the 11 Western States, as determined by the Secretary based upon market prices as reported by the Department of Agriculture.

(*b*) The fee for any fee year may be changed by the Secretary from that of the preceding year by fixing a new specified percentage of the average of the prices per pound of beef and lamb. The fee for any fee year shall, in any event, be adjusted by the Secretary, in addition to any percentage adjustment that may be made, to conform to changes in market price conditions whenever in the preceding calendar year there is a change in the average of such prices, rounded off to the nearest whole cent, of 2 cents or more above or below the corresponding average for the preceding year.

(*c*) The fee or fees established by the Secretary for any fee year, including announcement of the portion thereof to be credited to the range improvement fund, will be published as a notice in the FEDERAL REGISTER. All regular billings shall be issued in accordance with the rate or rates prescribed in the notice.

(3) *Crossing permits.* Upon application filed with the District Manager by any person showing the necessity for

crossing the Federal range with livestock for proper and lawful purposes, a crossing permit may be issued to him at a charge, payable in advance, of one cent per head per day for cattle, two cents per head per day for horses, and one-fifth cent per head per day for sheep and goats. A minimum charge of $5 will be made for each crossing permit, except that no fee will be charged where the trail to be used is so limited and defined that no substantial amount of forage will be consumed in transit.

(4) *Payment of fees; reduction or increase in numbers; modification of periods of use.* No license or permit shall be issued or renewed until payment of all fees due the United States under the Federal Range Code for Grazing Districts has been made. Fees for licenses and permits are due the United States upon issuance of the fee notice and are payable in advance of the first grazing period and for the full amount indicated on the fee notice; no license or permit shall be effective to authorize grazing use thereunder until such advance payment has been made. A permit may be canceled or reduced pursuant to paragraph (d) of this section for failure to pay the fee in accordance with the fee notice. Any licensee or permittee who desires to make temporary use of the grazing privileges during any authorized grazing period or periods in a manner other than that authorized in his existing license or permit must file with the district manager a written request for such change in use at least 10 days prior to the beginning of any such grazing period. If the district manager approves the request he will issue an adjusted fee notice accordingly.

(5) *Refunds.* No refund of fees properly paid will be made because of an unauthorized failure to use the grazing privileges, either in whole or in part, represented by a license or permit, except that:

(i) During periods of range depletion due to severe drought or other natural causes or in case of a general epidemic of disease during the life of a license or permit, the Director may in his discretion credit, remit, refund, reduce in whole or in part, or postpone the payment of fees for such depletion period so long as the emergency exists.

(ii) When fees have been paid which are not required by law, or which are in excess of lawful requirements, an application for refund thereof may be filed with the District Manager under the provisions of the act of March 26, 1908, as amended (35 Stat. 48; 43 U.S.C. 95, et seq.), or such excess fees may be credited on subsequent fee notices.

§ 4115.2–2 Transfers and relinquishments.

(a) *Transfer of base property; effect.* (1) A transfer of a base property or part thereof, whether by agreement, operation of law, or testamentary disposition, will entitle the transferee, if qualified under § 4111.1–1, to so much of the grazing privileges as are based thereon. Except as otherwise herein provided, the existing license or permit and the grazing privileges thereunder shall automatically and without further notice be terminated or decreased by such transfer to the extent of the grazing privileges attaching to the transferred base property; except that further grazing under the license or permit may be temporarily extended pursuant to request and notification filed in accordance with § 4115.2–1(e)(8)(i); except, also, where the transfer arises as a result of testamentary disposition the existing license or permit may continue in effect until the end of the current grazing season. Thereafter applications for renewal of a license or permit shall be filed by the heirs, devisees, executor, administrator, or personal representative, as the case may be.

(2) A transferee shall, within 90 days from the date of transfer, file with the District Manager documentary evidence of the transfer and an application on a form approved by the Director for a license or permit, active or nonuse, for the grazing privileges based thereon. Failure to comply with these requirements may result in the loss of the qualifications of the base property transferred. Where, however, a transfer, or a different vesting in any manner, of a leasehold interest in land or water may result in interference with the stability of livestock operations or with proper range management, upon a finding to that effect by the District Manager, after reference to the advisory board, such land or water will lose its base property qualifications and grazing privileges based thereon will be denied.

(b) *Transfer of base property qualifications; limitations; consent of owner or encumbrancer; effect.* (1) A licensee

or permittee may request the transfer of the recognized qualifications of base property then owned or controlled by him to other property owned or controlled by him, or to property owned or controlled by another person or persons qualified in accordance with § 4111.1–1. An application for approval of a transfer shall be filed with the District Manager on a form approved by the Director for land base or water base.

(2) Transfer of base property qualifications may be made under the following conditions:

(i) When an applicant owns or controls base land or lands having a forage production in excess of that required to support the licensed or permitted livestock, the qualifications may be concentrated on that part of the property having the forage production required by and which will continue to be used for the support of such livestock.

(ii) When such qualifications are to be transferred from land owned or controlled by the applicant, to land owned or controlled by others, the transfer will be recognized only to the extent such qualifications do not exceed the forage production of the new base property.

(iii) When an applicant owns or controls base water, the qualifications may be transferred to another adequate water source which will service the same range area.

(3) No transfer will be allowed under this paragraph if it interferes with the stability of livestock operations or proper range management, or adversely affects the local economy. No transfer will be allowed without the written consent of the owner or owners and any encumbrancer of the base property from which the transfer is to be made, except that in an application for transfer of class 1 qualifications where the applicant for such transfer is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established, such consent will not be required. Upon approval of the application by the District Manager after reference to the advisory board, the transfer shall be effective as of the date of filing of the application, and the base property from which the transfer is made will thereupon lose its qualifications to the extent indicated in the transfer.

(c) *Relinquishment of base property qualifications; limitation; effect.* Upon request, the district manager may accept a written relinquishment or waiver of grazing privileges on the Federal range and of base property qualifications of the base property owned or controlled by the applicant. Upon acceptance of such relinquishment, the base property will lose its qualifications to the extent specified: *Provided,* That no such relinquishment will be accepted without the written consent of the owner or owners, if other than the applicant, and any encumbrancer of the base property, except that if the applicant is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established, such owner's consent will not be required.

§ 4115.2–3 Appeals and hearings.

Any applicant whose interest is adversely affected by a final decision of the District Manager may appeal to an Examiner in accordance with § 1853.1 of this chapter. The conduct of hearings are provided for in §§ 1853.2 through 1853.6 of this chapter. Appeals to the Director will be pursuant to § 1853.7 of this chapter supplemented by Part 1840 of this chapter. An appeal from a decision of the Director may be made to the Secretary of the Interior in accordance with Part 1840 of this chapter (see § 1853.7(c) of this chapter).

§ 4115.2–4 Special rules for grazing districts.

Whenever it appears to a State Director after considering the recommendation of the district advisory board that local conditions in any district make necessary the adoption of a special rule on any of the matters in this part in order better to achieve an administration consistent with the purposes of the act, he may, recommend such a rule, supported by a factual showing of its necessity, for the approval of the Director. Such rule, if approved, shall be published in the FEDERAL REGISTER.

§ 4115.2–5 Range improvements and contributions.

(a) *Construction and maintenance of improvements on the Federal range.* (1) *Qualification of applicants for per-*

mits. An applicant for a permit to construct or maintain improvements under section 4 of the act, or to use and maintain improvements of such character constructed and owned by a prior occupant, on the Federal range, must be qualified under § 4111.1–1.

(2) *Applications.* Applications for such permits shall be filed in triplicate with the District Manager on a form approved by the Director.

(3) *Appeals.* The District Manager will act on the application after reference to the advisory board and such action shall be final unless the applicant or any interested party appeals in accordance with § 4115.2–3.

(4) *Assignments.* Assignments of section 4 permits shall be filed with the District Manager in triplicate on the authorized form and shall not be effective until approved by the District Manager.

(5) *Applications for use of improvements owned by prior occupant; procedure upon failure to agree.* Where an application shows that the applicant and the prior occupant have not agreed on the value of such improvements owned by the latter, the District Manager will promptly, at the applicant's expense, cause the prior occupant to be served either personally or by certified mail with a notice of the filing of the application, and an order to show cause within thirty days why the improvements should not be determined to be of the value alleged by the applicant. Upon such a showing, or if the prior occupant applies within thirty days from the date of service for an appearance before the District Manager, then in the light of such evidence as the applicant and the prior occupant may present in such appearance, the District Manager will determine the present reasonable value of the improvements. Such determination shall be final unless an appeal is taken in accordance with § 4115.2–3. Upon the failure of the prior occupant to show cause or to apply within thirty days for an appearance, the reasonable value of the improvements will be determined by the District Manager but shall be not less than the amount alleged by the applicant in his application, and the decision of the District Manager in such case shall be final. In any case when a decision has become final, payment by the applicant of the amount determined and a showing that the improvements are free of all encumbrances may be required prior to favorable action on the application for use of such improvements, and on any application for grazing privileges involving the use of such improvements.

(6) *Cooperative agreements.* A licensee or permittee may enter into a cooperative agreement with the District Manager for the construction and maintenance of range improvements on the Federal range. Failure of the licensee or permittee to comply with the terms of such an agreement within a reasonable time as allowed by the District Manager may result in cancellation of the license or permit as provided in § 4115.2–1(d).

(7) *Applications for lands containing range improvements; compensation; reservation.* Public lands embraced in a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, or other public land laws, as specified in § 4111.4.

(i) When the disposal application covers land upon which range improvements have been placed pursuant to a permit authorized under section 4 of the act, the owner thereof may be required to remove the improvements; or if the improvements are of a permanent nature, the land applicant may be required to agree in writing to compensate the licensee, permittee, or other owner of such improvements located on the lands applied for an amount to be mutually agreed upon, or, if the parties are unable to agree, then in the amount and within the time for payment as determined by the District Manager in accordance with the applicable procedure under subparagraph (5) of this paragraph.

(ii) (*a*) When the disposal application covers public land upon which range improvements have been placed by the United States, or pursuant to a cooperative agreement heretofore or hereafter entered into between the Bureau and the licensee, permittee, and/or other cooperators, the disposal application will be referred by the land office manager to the District Manager for determination as to whether it may be allowed, notwithstanding such improvements, and, if so, whether with or without a reservation. If the application is to be allowed without a reservation of the improvements, the applicant may be required to agree in writing to compensate for the

loss of such improvements in the amounts to be mutually agreed upon and payable separately to the Bureau and to the cooperators. If such improvements have been constructed in whole or in part with Federal funds and are administered by the Bureau of Land Management, and the application for disposal is in satisfaction of any lieu or indemnity selection right of any State under R.S. 2275, as amended (43 U.S.C. 851), such application may be allowed in the discretion of the authorized officer without compensation to the United States for its share of the value of the improvements, if the authorized officer shall first determine that the grazing improvements are no longer used or needed by the United States for the purpose for which the improvements were constructed and that the probable salvage value is insufficient to warrant the expense of removal of the salvageable materials in such improvements. In the event of disagreement, the District Manager shall determine the total amount of compensation due, as provided in subparagraph (5) of this paragraph, and the time for payment. Such amount shall then be payable separately to the Bureau and to the cooperators entitled thereto, in proportion to the amount or value of their respective contributions in money, material, or labor, to the total cost of the improvement, as made by them under the original cooperative agreement as specified by the District Manager.

(*b*) The refusal or failure of the land applicant to pay the licensee, permittee, or other party entitled thereto, in accordance with the agreement or in the amount fixed by the District Manager and within the time allowed, shall be just cause for the rejection of an application or for the cancellation of any rights or interests in the lands acquired by the applicant by reason of the allowance of his application. Such rejection or cancellation shall be subject to the right of appeal directly to the Director and to the Secretary, in accordance with the rules of practice (Part 1840 of this chapter).

(iii) Under the act of July 9, 1942, as amended (43 U.S.C. sec. 315q), the holder of a grazing license or permit shall be compensated for the losses sustained by reason of cancellation of or prevention of use of authorized grazing privileges resulting from the use of lands embraced in such license or permit for war or national defense purposes, in an amount determined to be fair and reasonable and to be paid by the head of the Federal department or agency making such use. Such payment shall be deemed payment in full for such losses.

(b) *Contributions for administration, protection, and improvement of public lands.* The District Manager may accept contributions under section 9 of the act, of labor, materials, equipment, or money, toward any of the Bureau's functions in administering, protecting, and improving public lands under its jurisdiction in the States.

(1) Any individual, association, corporation, grazing district advisory board, State or local body or private group, may enter into an agreement with the District Manager with respect to such contribution. Where the contribution is to include money, the contributor should execute the appropriate form as requested by the District Manager.

(2) Contributions may be conditioned upon their use for specific projects or in specific localities.

(3) The District Manager may authorize refund of any amounts deposited in excess of the contributor's proper share of the expense incident to the purpose for which the contribution was made.

§ 4115.2–6 Pledge of licenses and permits as security loans.

(a) A license or permit may be pledged as security for a loan of $500 or more from a lending agency if the loan is for the purpose of furthering the licensee's or permittee's livestock operations. Before making a loan, a lending agency may obtain from the District Manager a written statement concerning the status of the grazing license or permit and other pertinent information relating thereto. A service charge of $10 will be made for searching the records to furnish such information, except that Federal and State lending agencies shall be exempt from the charge.

(b) A borrower-permittee desiring an extension of the term of his permit may file a request therefor, in writing, with the District Manager, setting forth the name of the lending agency, purpose and amount of loan, and the need for the

extension of the permit term. When it appears that such extension will be in accordance with applicable law and regulation and not contrary to the public interest, the District Manager, in his discretion, may extend the permit for a period not to exceed 10 years from the date of the loan, subject to the rules and regulations then in force and to such additional terms and conditions as the District Manager may provide. The provisions of this paragraph shall not be applicable to grazing licenses which are issued annually on a temporary basis prior to the issuance of term permits.

(c) If the base property to which the grazing privileges on the Federal range covered by the pledged license or permit are attached as a grazing unit is acquired by the lending agency through foreclosure or otherwise, such agency, or purchasers, lessees, or occupants of the property authorized by such agency, if qualified, may apply to be recognized as the successor licensee, or permittee. If in selling the property the lending agency takes back a mortgage on the base property, the agency will receive the same consideration as in the case of an original loan.

(d) Where a lending agency files with the District Manager notice that it has made a loan and has accepted a grazing license or permit as security therefor in conformity with the provisions of this section, the District Manager as a matter of cooperation will keep such agency advised of any adverse action affecting the license or permit, but the failure to give timely notice of such adverse action shall impose no legal liability or obligation on the District Manager or the Bureau or any of its employees.

AUTHORITY: The provisions of this Part 9230 issued under R.S. 2478; 43 U.S.C. 1201.

§ 9239.3 Grazing.

§ 9239.3–2 Inside grazing districts.

A grazing license or permit may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the license or permit, or for a violation of the act or of any of the provisions of this part, or of any approved special rule.

(a) *Violations not clearly wilful.* Whenever it appears that a violation exists, not clearly wilful, the range manager shall serve written notice upon the alleged violator and upon any interested lien holder who has registered notice of his lien with the range manager. The notice shall set forth the act or omission constituting such violation, referring to the specific terms or provisions of the license or permit, of the act or of this part or of any approved special rule alleged to have been violated; and will allow the licensee or permittee a reasonable specified time from receipt of notice to demonstrate that there has been no violation or that he has since achieved compliance with such terms and conditions. If such showing is satisfactory to the range manager he will close the case; if satisfactory showing is not made within the time allowed, the violations alleged in the notice will be deemed to have been willful and the range manager will notify the State Director thereof for further action under paragraph (e) of this section.

(b) *Violations clearly wilful; special circumstances.* Whenever it appears to the district manager that a violation is clearly wilful, grossly negligent, or repeated, or when the public health, safety, or interest requires, or when disciplinary action is advisable, the district manager will refer the matter directly to the State Director for further action under paragraph (c) or (e) of this section, whichever is appropriate.

(c) *Unlawful grazing on the Federal range; determination of damages; removal of livestock; impoundment.* (1) Whenever the charge consists of unlawfully grazing livestock on the Federal range, the notice served on the alleged violator and any interested lien holder who has filed notice on his lien with the range manager will order the alleged violator to remove the livestock or to cause them to be removed immediately or within such reasonable time as may be specified. If the alleged violator fails to comply with the notice the range manager may proceed to exercise the proprietary right of the United States in the Federal range, under local impoundment law and procedure, if practicable; otherwise he may refer the matter through the usual channels for appropriate legal action by the United States against the violator.

(2) Where the owner of the trespassing livestock, or his representative, is known, the district manager shall make a determination of the damage to the Federal range and other property of the United States and shall make a demand for payment upon the alleged violator, setting forth the foregoing values including the value of the forage consumed. Where the trespass grazing is not deemed to be clearly wilful the forage value shall be computed at the rate of $2 per animal unit month, or at the commercial rate if such rate is the higher; if the district manager deems the trespass grazing to be clearly wilful, grossly negligent, or repeated he shall compute the forage value at $4 per animal unit month, or at twice the commercial rate if such amount is the higher.

(3) In any case where neither the owner of the trespassing livestock, or his representative, is known, or where conservation of the Federal range and of the forage thereon requires it, the district manager, when so authorized by written order of the State Director, may take steps to remove the trespassing livestock by such methods and by such means not inconsistent with legislation which pro-

hibits the use of airborne or motor-driven vehicles in the gathering of horses or burros, as may be necessary, and to dispose of them by sale or otherwise within not less than five (5) days after public notice of his intention to make such disposition, subject to the right of any owner or registered lienholder of such trespassing livestock to redeem the livestock within such nondisposal period upon payment of:

(i) The damage to the Federal range and other property of the United States.

(ii) The cost of such impoundment and removal.

(iii) The value of any forage consumed as determined in accordance with subparagraph (2) of this paragraph.

(4) If the amounts found to be due the United States in accordance with subparagraph (3), subdivisions (i), (ii), and (iii) of this paragraph are contested by the owner of the livestock, his representative, or lienholder, the trespassing livestock may be redeemed by the posting of a cash or corporate surety bond in lieu of immediate payment. Such bond will be adequate to insure full satisfaction of the claims made. A hearing will then be scheduled before an examiner of the Bureau of Land Management. The hearing will be conducted so far as practicable in the same manner as other hearings before an examiner. The evidence will be confined to the determination of the amount of damages, value of the forage consumed, and any other amounts considered to be due the United States as a result of said trespass. The examiner will render a written decision assessing the amounts due.

(5) Where conservation of the Federal range and the forage thereon requires it, the State Director may temporarily close a grazing district or any portion thereof, to grazing by any class of livestock to be specified in such order. Notice of the order shall be published in a local newspaper and shall be posted at the County Courthouse of the County in which the closed area lies. The order shall require all owners of livestock affected thereby, to remove such livestock from the area within not less than five days from date of publication of the notice. Thereafter the range manager shall proceed to impound, remove, and dispose of, in the most humane manner in accordance with the provisions of this paragraph any such livestock trespassing or grazing in violation of the closing order.

(d) *Amicable settlement of civil cases involving unauthorized use of the Federal range or damage to Federal property.* Offers of settlement for the value of the forage consumed in trespass as determined in accordance with paragraph (c) (2) of this section and for damage to Federal range or to other property of the United States resulting from an alleged violation of any provisions of the act or of the Federal Range Code for Grazing Districts in the amount of $2,000 or less may be accepted by the district manager. Offers of settlement in excess of $2,000 will be transmitted to the State Director for appropriate action. An offer of settlement will not constitute satisfaction of civil liability for the consumed forage and damage involved until finally accepted by the district manager or the State Director. Satisfaction of civil liability tdoes not relieve the alleged violator of any criminal liability under Federal law. No license or permit will be issued or renewed until payment of any amount found to be due the United States under this section has been offered.

(e) *Disciplinary action for violations; show cause.* (1) Whenever it appears to the State Director that disciplinary action is advisable because of a wilful, grossly negligent, or repeated violation, he shall cause a written notice to be served upon the licensee or permittee. The notice shall set forth the act or acts complained of, specifically referring to the terms, conditions, or provisions of the license or permit and the section or sections of the Federal Range Code for Grazing Districts, or of the Act alleged to have been violated, and an estimate of the amount of damages resulting therefrom, including the value of the forage consumed, as determined in accordance with paragraph (c) (2) of this section. The notice will cite the license or permittee to appear before an examiner of the Bureau of Land Management at a designated time and place to show cause why his license, permit, or base property qualifications should not be reduced or revoked or renewal thereof denied and satisfaction of damages made.

(2) The hearing upon the order to show cause will be conducted so far as

practicable in the same manner as other hearings before an examiner. The evidence shall be confined to the commission of the acts charged and the amount of damages, including the value of any forage consumed, due the United States. If the alleged violation is established to the satisfaction of the examiner, or upon the failure, without proper excuse satisfactory to the examiner, of the person named in the notice or his representative to appear at the hearing, the examiner will render a written decision assessing the amount of damages, including the value of any forage consumed, as determined in accordance with paragraph (c)(2) of this section, and directing the district manager to suspend, reduce, or revoke the license, permit, or base property qualifications or to deny renewal, if the facts so warrant.

(f) *Bonds for violations.* Whenever an applicant, licensee, or permittee commits a willful or wanton violation of any provision of this part or has repeatedly committed violations thereof, the State Supervisor may require him to furnish a cash or corporate surety bond on an approved form to cover all probable damages that may result from his violations for a period up to ten years. Upon the violator's failure to furnish a bond when so required, the range manager may refuse to issue or renew a license or permit, or the State Director may take action under paragraph (e) of this section, to revoke such license or permit.

(g) *Penal provision.* Under section 2 of the act any wilful violation of the provisions of the act or of this subpart or of approved special rules, after actual notice of the existence of the provisions of such act or of such rules and regulations, is punishable by a fine of not more than $500.

(h) *Appeals.* Appeal from the decision of the examiner to the Director and from the Director to the Secretary of any matter under § 9239.3–2 shall be made in accordance with the applicable provisions of § 4122.2–5 of this chapter and Appeals and Contests Parts 1840 and 1850 of this chapter.

Group 1800—Public Administrative Procedures

PART 1850—HEARINGS PROCEDURES

(Note: Subpart 1853 consists of special hearings procedures for "Inside Grazing Districts")

Subpart 1853—Grazing Proceedings

1853.1 Appeal to hearing examiner; motion to dismiss.
1853.2 Time and place of hearing; notice; intervenors.
1853.3 Authority of examiner.
1853.4 Service.
1853.5 Conduct of hearing.
1853.6 Findings of fact and decision by examiner; notice; submission to Director for decision.
1853.7 Appeals to the Director and the Secretary.
1853.8 Effect of decision suspended during appeal.
1853.9 Conditions of decision action.

Subpart—1853 Grazing Proceedings

AUTHORITY: The provisions of this Subpart 1853 issued under sec. 2, 48 Stat. 1270, 43 U.S.C. 315a.

§ 1853.1 Appeal to hearing examiner; motion to dismiss.

(a) Any applicant whose interest is adversely affected by a final decision of the district manager may appeal to an examiner by filing his appeal in the office of the district manager within 30 days after receipt of the decision. The appeal shall state the reasons, clearly and concisely, why the appellant thinks the decision of the district manager is in error. All grounds of error not stated will be considered as waived, and no such waived ground of error may be presented at the hearing unless ordered or permitted by the examiner.

(b) Any applicant for a grazing license or permit or any other person who, after proper notification, fails to protest or appeal a decision of the district manager within the period prescribed in the decision, shall be barred thereafter from challenging the matters adjudicated in such final decision.

(c) When separate appeals are filed and the issue or issues involved are common to two or more appeals, they may be consolidated for purposes of hearing and decision.

(d) The district manager will promptly forward the appeal to the State Director. Within thirty days after his receipt of the appeal the State Director may file on behalf of the district manager a written motion, serving a copy thereof upon the appellant, requesting that the appeal be dismissed for the reason that it is frivolous, the appeal was filed late, the errors are not clearly and concisely stated, the issues are immaterial, the issue or issues were included in a prior final decision from which no timely appeal was made, or all issues involved therein have been previously adjudicated in an appeal involving the same privileges, the same parties or their predecessors in interest. The appellant may file a written answer within twenty days after service of the motion upon him. The appeal, motion, the proofs of service, and the answers will be transmitted to the examiner, who shall rule on the motion, and, if the motion is sustained, dismiss the appeal by written order.

§ 1853.2 Time and place of hearing; notice; intervenors.

At least thirty days before the date set the district manager will notify the appellant of the time and place of the hearing within or near the district. Any other person who in the opinion of the district manager may be directly affected by the decision on appeal will also be notified of the hearing; such person may himself appear at the hearing, or by attorney, and upon a proper showing of interest, may be recognized by the examiner as an intervenor in the appeal.

§ 1853.3 Authority of examiner.

(a) The examiner is vested with the duty and general authority to conduct the hearing in an orderly, impartial and judicial manner, including authority to subpoena witnesses, recognize intervenors, administer oaths and affirmations, call and question witnesses, regulate the course and order of the hearing, rule upon offers of proof and the relevancy of evidence, and to make findings of fact, conclusions of law, and a deci-

sion. The examiner shall have authority to take or to cause depositions to be taken. Subpoenas, depositions, the attendance of witnesses, and witness and deposition fees shall be governed by § 1850.0–7, to the extent such regulation is applicable.

(b) The examiner also may grant or order continuances, and set the times and places of further hearings. Continuances shall be granted in accordance with § 1852.3–3, and when the ends of justice will be served thereby. Continuances will not be granted unless they are clearly justified and timely request has been made. Where it appears prior to the date of hearing that a continuance will be desired, the party desiring the continuance should promptly file a request for continuance with the examiner, along with proof of service of the request on the district manager and on other parties. The district manager and other parties shall have five days from receipt of the request to file objection to the continuance. The examiner will then rule on the request, and, if granted, set a new date for the hearing. The district manager will notify all interested persons of the new date.

§ 1853.4 Service.

Service of notice or other documents required under this subpart shall be governed by § 1850.0–6(e). Proof of such service shall be filed in the same office where the notice or document was filed within fifteeen days after such service, unless filed with the notice or document.

§ 1853.5 Conduct of hearing.

(a) The appellant, the State director or his representative, and recognized intervenors will stipulate so far as possible all material facts and the issue or issues involved. The examiner will state any other issues on which he may wish to have evidence presented. Issues which appear to the examiner to be unnecessary to a proper disposition of the case will be excluded; but the party asserting such issue may state briefly for the record the substance of the proof which otherwise would have been offered in support of the issue. Issues not covered by the appellant's specifications of error may not be admitted except with the consent of the State director or his representative, unless the examiner rules that such issue is essential to the controversy and should be admitted. The parties will then be given an opportunity to submit offers of settlement and proposals of adjustment for the consideration of the examiner and of the other parties.

(b) Unless the examiner orders otherwise, the State director or his representative will then make the opening statement, setting forth the facts leading to the appeal (or issuance of the show cause order where that is involved). Upon the conclusion of the opening statement, the appellant shall present his case, consistent with his specifications of error. Following the appellant's presentation, or upon his failure to make such presentation, the examiner, upon his own motion or upon motion of any of the parties, may order summary dismissal of the appeal with prejudice because of the inadequacy or insufficiency of the appellant's case, to be followed by a written order setting forth the reasons for the dismissal and taking such other action under this subpart as may be proper and warranted. An appeal may be had from such order as well as from any other final determination made by the examiner.

(c) In the absence or upon denial of such motion the State Director or his representative and recognized intervenors may present evidence if such a presentation appears to the examiner to be necessary for a proper disposition of the matters in controversy, adhering as closely as possible to the issues raised by the appellant. All oral testimony shall be under oath or affirmation, and witnesses will be subject to cross-examination by any party to the proceeding. The examiner will himself question any witness whenever it appears necessary. Documentary evidence will be received by the examiner and made a part of the record, if pertinent to any issue, or may be entered by stipulation. No exception need be stated or noted and every ruling of the examiner will be subject to review on appeal. The party affected by an adverse ruling sustaining an objection to the admission of evidence, may insert in the record, as a tender of proof, a brief written statement of the substance of the excluded evidence; and the

opposing party may then make an offer of proof in rebuttal. The examiner will summarily stop examination and exclude testimony on any issue which he determines has been adjudicated previously in an appeal involving the same privileges and the same parties or their predecessors in interest, or which is obviously irrelevant and immaterial to the issues in the case. At the conclusion of the testimony the parties at the hearing shall be given a reasonable opportunity, considering the number and complexity of the issues and the amount of testimony, to submit to the examiner proposed findings of fact and conclusions of law, and reasons in support thereof, or to stipulate to a waiver of such findings and conclusions.

§ 1853.6 Findings of fact and decision by examiner; notice; submission to Director for decision.

(a) As promptly as possible after the time allowed for presenting proposed findings and conclusions, the examiner will make findings of fact and conclusions of law unless waiver has been stipulated, and will render a decision upon all material issues of fact and law presented on the record. In doing so he may adopt the findings of fact and conclusions of law proposed by one or more of the parties if they are correct. He must rule upon each such proposed finding and conclusion. The reasons for the findings, conclusions and decisions made shall be stated, and along with the findings, conclusions and decision, shall become a part of the record in any further appeal. A copy of the decision shall be sent by certified mail to the appellant and all intervenors, or their attorneys of record.

(b) The Director may require, in any designated case, that the examiner make only a recommended decision and that such decision and the record be submitted to the Director for consideration. In such instances the Director shall make the initial decision which shall constitute the decision of the Bureau, without prejudice to the right of any party affected to be furnished with a copy of the transcript of testimony, as provided in the next paragraph, and to appeal to the Secretary in the manner prescribed by Subpart 1844.

§ 1853.7 Appeals to the Director and the Secretary.

(a) *Notice of appeal to the Director; furnishing copies of the transcript.* Within ten days after the receipt of the decision of the examiner any party, including the State director or his representative, desiring to appeal to the Director shall file a written notice of his intention to appeal and may request a copy of the transcript of testimony. Copies of the transcript will be furnished to the State director without charge, and to other appellants and to the intervenors, at a charge of ten cents per folio, except that upon a sufficient showing to the examiner, supported by an affidavit, that an appellant or intervenor is financially unable to pay such fee, a copy will be furnished him without charge. The examiner shall include in the record proof of delivery of the transcript showing the date of such delivery. Notice of appeal and request for a copy of the transcript shall be filed through the office of the Hearing Examiner.

(b) *Appeals to the Director.* An appeal from any decision of the examiner shall be filed in the Office of the Director, Bureau of Land Management, Department of the Interior, Washington, D.C., 20240, together with any brief in support thereof, within thirty days after date of receipt of the transcript of testimony, or, if the transcript is not requested, within thirty days after receipt of the examiner's decision. Within the same period a copy of the appeal and of any brief must be served on each party named in the examiner's decision, and upon the State Director, either personally or by certified mail. Any party, including the State Director, opposing the appeal will be allowed twenty days from date of receipt of the copy of the appeal and brief within which to file in the Office of the Director a reply brief, a copy of which must be served on the appellant(s) in the same manner and the same period. The appeal in other respects shall be made in accordance with Part 1840, except that no filing fee is required.

(c) *Appeals to the Secretary of the Interior.* An appeal from the decision of the Director may be made to the Secretary of the Interior in accordance with Subpart 1844.

§ 1853.8 Effect of decision suspended during appeal.

(a) An appeal shall suspend the effect of the decision from which it is taken pending final action on the appeal. Where the appeal is concerned with the grazing privileges to be granted under the current application, an appellant who was granted grazing privileges in the preceding year may continue to use such privileges pending final action on the appeal, unless the decision appealed from is made immediately effective, as herein next provided.

(b) When the orderly administration of the range or other public interest so requires, (1) the district manager may provide initially in his decision that it shall be in full force and effect pending decision on an appeal therefrom; (2) the examiner or the Director may provide in the decision on an appeal before such officer, that it shall be in full force and effect pending decision on any further appeal; (3) the Director or the Secretary may provide by interim order that any decision from which an appeal is taken shall be in full force and effect pending final decision on the appeal. Any action taken by the district manager pursuant to a decision shall be subject to modification or revocation by the Examiner, Director, or the Secretary upon an appeal from the decision. In order to insure the exhaustion of administrative remedies before resort to court action, no decision which at the time of its rendition is subject to appeal to a superior authority in the Department shall be considered final so as to be agency action subject to judicial review under section 10(c) of the Administrative Procedure Act of June 11, 1946 (60 Stat. 237), unless it has been made effective pending a decision on appeal in the manner provided in this paragraph.

§ 1853.9 Conditions of decision action.

(a) *Record as Basis of decision; definition of record.* No decision shall be rendered except on consideration of the whole record or such portions thereof as may be cited by any party or by the State Director and as supported by and in accordance with the reliable, probative and substantial evidence. The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding shall constitute the exclusive record for decision.

(b) *Effect of substantial compliance.* No adjudication of grazing privileges will be set aside on appeal, if it appears that it is reasonable and that it represents a substantial compliance with the provisions of Part 4110 of this chapter.

PART 4120—GRAZING ADMINISTRATION (OUTSIDE GRAZING DISTRICTS)

Subpart 4122—Grazing Leases (Sec. 15—Taylor Grazing Act)

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AUTHORITY: The provisions of this Part 4120 issued under sec. 2, 48 Stat. 1270; 43 U.S.C. 315a.

Subpart 4122—Grazing Leases (Sec. 15—Taylor Grazing Act)

§ 4122.0–3 Authority.

Section 15 of the act of June 28, 1934 (48 Stat. 1275), as amended, authorizes the Secretary of the Interior to lease for grazing purposes vacant, unappropriated, and unreserved public lands outside of established grazing districts in the continental United States only.

§ 4122.0–5 Definitions.

(a) "Secretary" means Secretary of the Interior.

(b) "Director" means Director, Bureau of Land Management.

(c) "State Director" means the proper State Director, Bureau of Land Management.

(d) "Manager" means manager of the proper land office. Where there is no land office, it means the Director, Bureau of Land Management.

(e) "Signing officer" means the Government official who has been duly authorized to issue a grazing lease.

(f) "Field office" means any office of the Bureau of Land Management, including the land office, near the lands applied for and in the State in which such lands are situated. If there is no land office or other field office in the State, it means the office of the Director, Bureau of Land Management, Washington 25, D.C.

(g) "The act" means the act of June 28, 1934 (48 Stat. 1269), as amended.

§ 4122.1 Conditions.

§ 4122.1–1 Qualifications of applicants.

An applicant for a grazing lease is qualified if the applicant

(a) Is a citizen of the United States, or

(b) Has filed a declaration of intention to become a citizen: *Provided*, That an applicant who has filed such declaration but has not filed a petition for naturalization before a court of competent jurisdiction within seven years from the

date of filing the declaration or, having filed such petition, has failed to attain citizenship within a reasonable time thereafter and is unable to show any satisfactory reason for such failure, shall be disqualified to receive a grazing lease or any renewal of an existing lease until he has actually attained citizenship, or

(c) Is a group, association, or corporation which is authorized to conduct business under the laws of the State in which the lands applied for are located and the controlling interest in which is vested in a citizen or citizens or persons who would be qualified as individual applicants under paragraphs (a) and (b) of this section.

§ 4122.1–2 Classes of applicants; preference rights.

The act, as amended, provides for the issuance of grazing leases to classes of applicants in the following order:

(a) Preference-right leases to applicants who are the owners, homesteaders, lessees, or other lawful occupants of lands contiguous to or cornering on an isolated or disconnected tract embracing 760 acres or less for the whole of such tract, upon the terms and conditions prescribed by the Secretary, provided the preference-right is asserted during a period of 90 days after such tract is offered for leases.[1]

(b) Preference-right leases to applicants who are owners, homesteaders, lessees, or other lawful occupants of contiguous lands to the extent necessary to permit the proper use of such contiguous lands.

(c) Leases where no preference-right applicant is involved.

§ 4122.2 Application for lease.

§ 4122.2–1 Applications.

An application for lease shall be executed in triplicate on a form approved by the Director and filed in triplicate in any field office of the Bureau of Land Management in the state in which the lands applied for are situated.

§ 4122.2–2 Filing fee.

A filing fee of $10 will be charged for each grazing lease application, including an application arising out of the assignment of leased lands, when it embraces in whole or in part lands which are not already under lease by the applicant or by the assignor on the date of filing such application.

§ 4122.2–3 No right conferred by application prior to lease.

The filing of an application will not segregate the land applied for from application by other persons for a grazing lease or from other disposition under the public land laws. As the issuance of a lease is discretionary, the filing of an application for a lease will not in any way create any right in the applicant to a lease, or to the use of the lands applied for pending the issuance of a lease. Any such unauthorized use constitutes a trespass.

§ 4122.2–4 Action on defective application or where the lands applied for are not subject to grazing leasing.

Upon the filing of any application, the officer receiving it may require any defects in the application to be cured or additional information to be provided. The signing officer may reject any application if the applicant fails to cure defects in the application within the time allowed, which period shall not be less than thirty days from the date of receipt of notice of such defects by the applicant. If the application must be rejected because of the status of the land for which application is made as where land is in an allowed entry, oth-

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[1] Where the lands applied for include the even-numbered sections within the limits of a railroad grant, even though in the aggregate such lands exceed 760 acres, each such section will be considered as an isolated or disconnected tract within the meaning of this provision. The difference between the higher preference right accorded under this paragraph and the preference accorded under paragraph (b) of this section is that the applicant is not required to demonstrate that the public lands are necessary for the proper use of the contiguous or cornering lands, except where there are conflicting applications of the same class of applicants.

By Departmental Notice of July 31, 1937, all vacant, unreserved and unappropriated public lands, exclusive of Alaska, not included in an established grazing district, were then offered for lease under section 15; all lands not then subject to lease under section 15 because of their appropriation or reservation, were offered for lease as of the date any such lands first became subject to lease.

erwise appropriated or reserved and not subject to lease under the act, or not public land, a manager, if his office has land status, or a signing officer shall reject the application.

§ 4122.2–5 Conflicting applications.

In those cases where more than one applicant applies for the same land and where it appears that a division of the lands should be made, such conflicting applicants will be given an opportunity to agree to a division of the lands prior to a determination by the signing officer as to the disposition of such conflicting applications or division of the lands. After a division of the range has been made either by agreement between applicants which is acceptable to the signing officer or by determination of the signing officer where there is no acceptable agreement, any conflicting applications or protests filed subsequent thereto will be rejected.

§ 4122.2–6 Protests.

Protests against the approval of an application for a lease should be filed in the same manner and number of copies as applications for a grazing lease, contain a complete disclosure of all facts upon which the protest is based, and describe the lands involved in such protests and should be accompanied by evidence of service of a copy of the protest on the applicant. If the protestant desires to lease all or part of the land embraced in the application against which the protest is filed, the protest should also be accompanied by an application for a grazing lease.

§ 4122.3 Leases.

§ 4122.3–1 Issuance of leases.

(a) *Conditions.* The lease will be executed by the signing officer and transmitted to the lessee only after final action is taken on any protests or timely appeals which may have been filed. The applicant's signature to the application shall be considered to be his signature to and his acceptance of the lease when executed by the signing officer, without prejudice to the applicant's right to appeal from the disallowance of his application as to any part of the lands applied for or from the issuance of a lease for a shorter term than that applied for.

(b) *Term.* A lease may be issued for a period of not more than 10 years. Renewals may be for periods of not more than 10 years, upon such terms and conditions as may then be prescribed.

(c) *Application for renewals.* An application for renewal of lease should be executed and filed in triplicate on a form approved by the Director at least 90 days prior to the expiration of the lease. The application may also include a request for the consolidation of other outstanding grazing leases held by the lessee. Such application does not confer on the lessee any preference right to a renewal but will, however, authorize the exclusive grazing use of the lands by the lessee in accordance with the provisions of the lease pending final action on the application for renewal.

(d) *Requirements and stipulations.* The lease will provide for an allowance of forage for wildlife, and within the discretion of the signing officer the number of livestock to be grazed, proper grazing season or reservations for authorized trailing across the land, and will contain the standard provisions set forth in the combined application and lease form, together with any other terms, conditions, or reservations which the signing officer in his discretion may deem necessary and proper.

(e) *Subleases.* No part of the leased lands may be subleased.

§ 4122.3–2 Leases of withdrawn or reserved lands; preference right leases for lands restored from withdrawal.

(a) The signing officer may issue leases for public lands withdrawn for resurvey, or withdrawn and reserved in aid of legislation, or for power sites, classification or other public purposes,[2] if the use of the land for grazing is not inconsistent with the purposes of the withdrawal. Lands included in stock drive-

[2] Certain lands withdrawn for reclamation purposes are, pursuant to the cooperative agreement of February 28, 1945, between the Bureau of Reclamation and the Bureau of Land Management, leased in accordance with principles of section 15 leases, under authority of subsection (I) of section 4, act of December 5, 1924 (43 Stat. 703, 43 U.S.C. sec. 501). Those lands withdrawn for reclamation purposes which are not subject to the Cooperative Agreement of February 28, 1945, will, upon restoration from the reclamation withdrawal become subject to the provisions of paragraph (b) of this section.

way and public water reserve withdrawals may be leased in accordance with § 2321.3 of this chapter. Any lease issued covering withdrawn lands must contain the stipulations which have been prescribed for the protection and use of the land for the purpose for which it was withdrawn or reserved.

(b) Where public lands are restored from a withdrawal and the signing officer determines that a grazing lease for the lands may be issued, the party using such lands or part thereof for grazing purposes under authority of the agency which had jurisdiction over the land immediately prior to their restoration, shall have a superior preference right to lease the restored lands previously used by him. The preference right must be asserted and an application for lease on a form approved by the Director (see § 4122.2–1) must be filed not more than 90 days after the date of signing of the order of revocation of the withdrawal, or not more than 90 days after the end of the current lease year under which the land is being used, whichever is the later. The application must be accompanied by a copy of the prior lease, license, permit or other authority upon which the preference claim is based. The new lease will be dated as of the first day following the end of such current lease year, or as of the date of its issuance, in the discretion of the signing officer and for such term as he may determine.

§ 4122.3–3 Rentals, schedule of grazing fees; billing notices; effect of failure to pay.

(a) The annual rental charge for the use of the leased land will be based on the number of acres under lease, the estimated grazing capacity in AUMs (animal unit months), and the rate per AUM indicated in the then-current schedule of grazing fees established by the Director, Bureau of Land Management. The schedule of grazing fees will be established and may be modified, revised, or amended as the Director may determine from time to time and notice thereof shall be published in the FEDERAL REGISTER. The schedule rate will be effective (1) immediately as to new leases issued after date of publication; (2) 30 days after publication as to existing leases, the rental period of which begins after the 30-day period. The minimum rental on a lease shall not be less than $1 per annum.

(b) Rental groups: (1) Where the rental charge for a new lease is $50 or less for the full term of the lease, the entire amount shall be paid in advance and the rental charges will not be revised during the term of the lease. No part of the rental paid will be refunded because of cancellation, relinquishment or assignment, except as provided in §§ 4122.5–3 and 4122.3–5.

(2) Where the rental for the entire lease term exceeds $50 and the rental for the first three-year period is $100 or less, the total amount for such three-year period shall be paid in advance. No part of the rental paid will be refunded because of cancellation, relinquishment or assignment, except as provided in §§ 4122.5–3 and 4122.3–5. Rental charges may be revised at the end of each three-year period based on the grazing fee schedule then in effect. Billing notices will be issued prior to the termination of each three-year period and the rental is due and payable upon receipt of the billing notice.

(3) Where the amount of the rental charge for the first three-year period would exceed $100, the rental shall be charged and paid annually based on the then effective grazing fee schedule. A billing notice for the amount of such annual rental will be sent each lessee in advance and is due and payable upon receipt. No part of the rental paid will be refunded because of cancellation, relinquishment or assignment, except as provided in §§ 4122.5–3 and 4122.3–5.

(c) Effect of failure to pay: The first rental payment required under a proposed lease in accordance with this section shall be made within 10 days from receipt of the lease form; if not paid within such time the lease shall be null and void and of no effect and all rights of the proposed lessee thereunder or under the application upon which it is based shall be considered as terminated. Subsequent rental payments for succeeding lease periods as required by paragraph (b) (2) or (3) of this section are payable in advance. In any event, if such payment is not received in the proper office by the last day of the current lease period, or within 10 days of lessees' receipt of the billing notice whichever is the later, then the lease shall be considered as cancelled and all

rights thereunder terminated as of the end of such current lease period.

(d) No refund of rentals properly paid in accordance with the regulations in this part and the terms of the lease will be made because of a failure to use the grazing privileges granted by the lease, except that during periods of range depletion due to severe drouth or other natural causes or in case of a general epidemic of disease during the life of the lease the Director will in his discretion remit, refund, reduce in whole or in part, or postpone the payment of rentals for such period of depletion of general epidemic.

§ 4122.3–4 Assignment of lease.

The lessee may assign the lease only with the consent of the signing officer. The proposed assignment must be filed with the signing officer within 90 days from date of its execution, and shall contain all the terms and conditions agreed upon between the parties, and the assignee's agreement to be bound by the terms of the lease, together with triplicate copies of the combined application and lease form as approved by the Director, properly executed by the assignee, setting forth all the data required thereby. No assignment will be recognized nor will it confer on the assignee any rights to the leased area until a lease therefor is issued to him.

§ 4122.3–5 Lease lands subject to disposition; compensation to lessee for loss of improvements.

(a) Lands embraced in a grazing lease are subject to disposition under the provisions of the Act of June 28, 1934 (48 Stat. 1272, 1274), as amended, or other public land laws. Before any application for such disposition is allowed, evidence must be furnished that the applicant has agreed to compensate the lessee and the United States for any grazing improvements placed on the lands under the authority of the lease, permit, or cooperative agreement in an amount and manner to be mutually agreed upon. If such improvements have been constructed in whole or in part with Federal funds and are administered by the Bureau of Land Management, and the application for disposal is in satisfaction of any lien or indemnity selection right of any State under R.S. 2275, as amended (43 U.S.C. 851), such application may be allowed in the discretion of the authorized officer without compensation to the United States for its share of the value of the improvements, if the authorized officer shall first determine that the grazing improvements are no longer used or needed by the United States for the purpose for which the improvements were constructed and that the probable salvage value is insufficient to warrant the expense of removal of the salvageable materials in such improvements. If the parties are unable to agree as to the amount, manner, and time for compensation for such improvements, the amount, manner, and time shall be fixed by the authorized officer. The failure of the applicant to comply with the agreement or the conditions fixed by the authorized officer shall be just cause for cancellation of any right or interest in the lands acquired by the applicant by reason of the allowance of his application.

(b) Where part of the leased lands are disposed of as provided by this section, the subsequent annual rental charges will be reduced proportionately to reflect the loss of the lands from the leasehold. Such reduced rentals shall apply to rentals for the lease years commencing subsequent to the notice of such reduction.

§ 4122.4 Construction, maintenance, and removal of improvements.

§ 4122.4–1 Permit required.

After the issuance of a lease, the lessee may fence the lands or any part thereof, develop water by wells, tanks, water holes, or otherwise, and make or construct other improvements for grazing or stock raising purposes, so long as such improvements do not impair the value of the lands or interfere with other uses: *Provided,* That a permit or cooperative agreement is obtained under the procedure set forth in this section. The lessee will be required to comply with the provisions of the laws of the state in which the leased lands are located with respect to the cost and maintenance of fences.

§ 4122.4–2 Applications for permits and cooperative agreements.

Applications for permits, cooperative agreements, or arrangements to construct and maintain range improvements shall set forth the location of such improvements by legal subdivision of the

public land survey, the necessity, use, cost, and description of such improvements, item by item, shall designate the time and manner of their construction, the period of use, the method of operation, protection, repair, removal, or other disposition, and shall include any other pertinent information. When necessary to explain properly the improvements and matters connected therewith, the application shall be accompanied by a sketch of the improvements with specifications and a map showing the location of the improvements. Applications for a permit shall be made on a form approved by the Director and shall be filed in triplicate with the signing officer. Application for a cooperative agreement shall be made on a form approved by the Director.

§ 4122.4–3 Action on the application.

Action will be taken on the application by the signing officer. If the application is approved, the signing officer will issue a permit or enter into a cooperative agreement for the construction and maintenance of the improvements which have been approved.

§ 4122.4–4 Removal of improvements.

(a) Upon the expiration of the lease or its earlier termination, the signing officer may in his discretion and upon written application filed by the lessee not more than 30 days after date of such expiration or termination, require a proposed subsequent lessee, prior to the execution of a new lease, to agree to compensate the lessee for any grazing improvements of a permanent nature that have been placed upon the leased lands under authority of a section 15 lease executed prior to November 4, 1948, or thereafter, under a permit issued under § 4122.4–2. The amount of such compensation shall be determined in accordance with the procedure set forth in § 4122.3–5. The failure of the subsequent lessee to pay the lessee in accordance with such agreement shall be just cause for cancellation of the subsequent lessee's lease.

(b) The lessee will be allowed three months from the date of expiration or termination of the lease within which to remove such improvements as are not disposed of in the manner set forth above; if not removed or otherwise disposed of within the said period such improvements shall become the property of the United States. No improvements may be removed at any time the lessee is in default with respect to the lease.

§ 4122.5 Supervision and management of leased lands.

§ 4122.5–1 Access.

The issuance of a grazing lease does not alter or restrict the right of access across the leased lands by licensed hunters or fishermen or restrict their right to hunt and fish on such lands in accordance with the laws of the United States or of the state in which the lands are located, nor may the lessee interfere with such rights. Nor shall such lease restrict or limit prospecting, locating, developing, mining or patenting the mineral resources in the leased lands; miners, prospectors and mineral lessees of the United States and all other authorized persons shall be entitled to enter the leased lands.

§ 4122.5–2 Inspection of leased premises.

The land described in the lease shall be subject to inspection at all reasonable times by duly authorized representatives of the Department of the Interior. Other Federal agents, as well as game wardens, shall be permitted access to the lands in connection with necessary official business.

§ 4122.5–3 Reduction in leased area; adjustment of grazing use to conform with changes in grazing capacity.

The leased area may be reduced if it is determined that such area is required for the protection of sources of water supply to communities, or for camping places, stock driveways, roads and trails, or town sites, or for feeding grounds near communities for the use of domestic livestock or near the slaughtering or shipping points for use of stock to be marketed or for other public purposes; the authorized grazing use may be adjusted to conform to changes in grazing capacity estimates. In the case of any such reduction or adjustment, a proportionate adjustment will be made in the rental for the lease years commencing subsequent to the notice of such reduction or adjustment.

§ 4122.5–4 Temporary closing of leased area.

The State Director, in his discretion, may close temporarily to grazing, por-

tions of the leased lands whenever, because of depletion of the vegetal cover due to drought, epidemic, fire, or any other cause, such action is necessary to restore the forage on the range to its normal condition. Such temporary closing will not operate to exclude such lands from the lease.

§ 4122.5–5 Crossing permits.

Upon application filed with the authorized officer by any person showing the necessity for crossing the Federal land with livestock for proper and lawful purposes, a crossing permit may be issued to him at a charge, payable in advance, of one cent per head per day for cattle, two cents per head per day for horses, and one-fifth cent per head per day for sheep and goats. A minimum charge of $10 will be made for each crossing permit, except that no fee will be charged where the trail to be used is so limited and defined that no substantial amount of forage will be consumed in transit.

§ 4122.5–6 Trespass.

Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across lands that are subject to lease or permit under the provisions of this Part or within a stock driveway, without a lease or other authorization from the Bureau of Land Management, is prohibited and constitutes trespass. Trespassers will be liable in damages to the United States for the forage consumed and for injury to Federal property, and may be subject to civil and criminal prosecution for such unlawful acts. (See § 9239.3–1 of this chapter for detailed trespass regulations.)

§ 4122.6 Cancellation.

Except as otherwise provided in § 4122.3–3, if the lessee shall fail to comply with any of the provisions of the regulations in this part or of the lease or of any cooperative agreement on a form approved by the Director entered into with the Bureau of Land Management for the benefit of the lease, and such default shall continue for 30 days after service of written notice thereof, or if the lease was issued improperly through error with respect to a material fact or facts, the lease may be terminated and cancelled by the authorized officer.

§ 4122.7 Pledge of leases as security for loans; applications for extension of lease by borrower-lessee.

(a) A lease may be pledged as security for a loan of $500 or more from a lending agency if the loan is for the purpose of furthering the lessee's livestock operations. Before a loan is made, the lending agency may obtain from the authorized officer a written statement concerning the status of the grazing lease and other pertinent information relating thereto. A service charge of $10 will be made for searching the records to furnish such information, except that Federal and State lending agencies shall be exempt from the charge.

(b) An application by a borrower-lessee for an extension of the lease term should be executed and filed in triplicate on a form approved by the Director. When it appears that such extension will be in accordance with applicable law and not contrary to the public interest, the signing officer in his discretion may extend the lease for a period not to exceed 10 years from the date of the loan subject to such terms and conditions as are then provided by the regulations in this part, and by the signing officer.

(c) If the property of the lessee which was the basis for the granting of a preference right is acquired by the lending agency through foreclosure or otherwise, such agency or its occupants of the property or a purchaser of the property from the agency, if qualified, may apply on a form approved by the Director to be recognized as the new lessee. If, in selling the property, the lending agency takes back the mortgage on the property the agency will receive the same consideration as in the case of an original loan.

(d) Where a lending agency files in the office of the authorized officer notice that it has made a loan and has accepted a grazing lease as security therefor, in conformity with the provisions of this section, such agency will be advised of any adverse action taken affecting the lease, but the failure to give timely notice of such adverse action shall impose no legal liability or obligation on the Bureau or any of its employees.

§ 4122.8 Appeals; filing.

An appeal from any decision rendered pursuant to §§ 4122.0 to 4122.8, inclusive, may be taken to the Director and the Secretary, in accordance with ap-

peals and contests (Parts 1840 and 1850 of this chapter). The appeal should be filed with the officer who rendered the decision.

AUTHORITY: The provisions of this Part 9230 issued under R.S. 2478; 43 U.S.C. 1201.

§ 9239.3 Grazing

§ 9239.3–1 Outside grazing districts.

(a) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across lands that are subject to lease or permit under the provisions of this subpart or within a stock driveway, without a lease or other authorization from the Bureau of Land Management, is prohibited and constitutes trespass. Trespassers will be liable in damages to the United States for the forage consumed and for injury to Federal property, and may be subject to civil and criminal prosecution for such unlawful acts.

(b) A lessee who grazes livestock in violation of the terms and conditions of his lease by exceeding numbers specified, or by allowing the livestock to be on Federal land in an area or at a time different from that designated shall be in default and shall be subject to the provisions of § 4122.6 of this chapter. In addition he may be subject to trespass action in accordance with the practices and procedures indicated in §§ 4113.1–1, 4113.1–3 (a), (c), (d), 4113.1–4, and 4113.1–7 of this chapter, modified so far as practicable and necessary to include Federal land outside of established grazing districts.

(c) When the alleged trespasser is not a lessee of lands under the regulations of this subpart the signing officer may take action against the trespasser in accordance with the practices and procedures in §§ 4113.1–1, 4113.1–3 (a), (c), (d), 4113.1–4, and 4113.1–7 of this chapter modified so far as practicable and necessary to include lands subject to lease under the provisions of this subpart or within a stock driveway.

This Circular replaces and revokes all of Circulars 2141, 2114, 2097, 2090, 2080, 2075, 2052, 1811, 1780, 1779, and 1760 relating to 43 CFR Parts 4110, 160 and 161.

GPO 842-135

This Circular replaces and revokes all of Circulars 2041, 2124, 2097, 2090, 2080, 2013, 2022, 1811, 1780, 1779, and 1760 relating to 49 CFR Parts 4110, 160 and 161.

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the United States shall be similarly construed.

* * * * *

[Sec. 7701 as amended by sec. 22(g), Alaska Omnibus Act (73 Stat. 146); sec. 18(1), Hawaii Omnibus Act (74 Stat. 416); sec. 103 (t) of the Social Security Amendments 1960 (74 Stat. 941)]

(Sec. 7805 of the Internal Revenue Code of 1954, 68A Stat. 917; 26 U.S.C. 7805)

[F.R. Doc. 64-6228; Filed, June 22, 1964; 8:52 a.m.]

Title 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 113—TREATMENT OF OUTGOING POSTAL UNION MAIL

PART 114—TREATMENT OF INCOMING POSTAL UNION MAIL

Forwarding Postal Union Mail

The notice of proposed revisions in § 113.4(b) and § 114.3 (a) and (b) of Title 39, Code of Federal Regulations was published in the FEDERAL REGISTER of April 23, 1964, on pages 5476-5477. Interested persons were given 30 days in which to submit written comments with respect to the proposal.

The amendment of § 113.4(b) provides [illegible]lations to be followed for forwarding [illegible]estic mail when the addressee has moved to another country and for handling mail bearing a foreign return address.

The amendments of § 114.3 (a) and (b) limit the redirection and forwarding of periodical publications which can not be delivered because the addressee has moved to another address to a period of three months after the change of addressee occurs.

No comments were received by the Department with respect to the proposed regulations. Accordingly, the Department adopts the proposal as so published subject to a minor editorial change in § 113.4(b)(2). As so adopted, the amendments read as follows:

I. In § 113.4, amend paragraph (b) to read as follows:

§ 113.4 Forwarding.

* * * * *

(b) *Domestic*—(1) *Addressee moved to another country.* Domestic post or postal cards and ordinary letters (except those that appear to contain merchandise) addressed to persons who have filed a change of address to another country are redirected and forwarded to the foreign address unless they bear a notice forbidding forwarding. They are forwarded by surface if surface mail is involved and by air if air mail is involved, without prepayment of additional post- [illegible] Credit is allowed for the postage [illegible]ady on the articles, and only the [illegible]eficiency will be collected on delivery. Domestic mail, other than post or postal cards and ordinary letters which appear to contain no merchandise, shall be treated as undeliverable. (See Part 48 of this chapter.)

(2) *Bearing foreign return address.* Any domestic letters (except those that appear to contain merchandise) or domestic post or postal cards bearing the sender's request for return are returned to the foreign return address. Return is by surface mail only, and without prepayment of additional postage. Indication of a foreign return address on registered or certified letter mail will be deemed to constitute a request on the part of the sender that the letter is to be forwarded to the foreign return address if it is not deliverable at the United States address. It further indicates that the sender thereby agrees in case of loss of a registered letter after dispatch from the United States to adjustment of indemnity in accordance with the provisions of § 162.2 of this chapter, irrespective of the amount of registry fee paid. Articles or packages containing merchandise are held by the post office of address and a report sent to the Department as provided in § 131.8(b) of this chapter. Treat other undeliverable domestic articles with foreign return addresses as dead mail. (See § 48.7(b)(1) of this chapter.)

* * * * *

NOTE: The corresponding Postal Manual section is 223.42.

II. In § 114.3 amend paragraphs (a) and (b) to read as follows:

§ 114.3 Forwarding.

(a) *Within the United States.* (1) Articles received by surface may be forwarded by surface and articles received by air may be forwarded by air, without an additional postage charge or fee, unless the envelope or wrapper bears a notation forbidding its being forwarded.

(2) Second-class publications from Canada are treated in accordance with § 48.2(b) (1) through (3) of this chapter. A periodical publication from any other country whose delivery requires that it be forwarded to another local address or to another post office shall be forwarded and the addressee shall be requested to notify the publisher of his new address. If the publication is still being received three months after the change of address occurs, the post office of original address will send a complete copy, with a notation of the new address of the addressee, to the International Service Division, Bureau of Transportation and International Services, Post Office Department, Washington, D.C., 20260, for attention of the sender through the postal authorities of the country of mailing. Thereafter, any copies received with the old address shall be disposed of as waste, except that publications bearing the request of sender for return shall be endorsed "Moved", "Not Forwardable" and returned to origin.

(b) *To another country.* (1) Articles can be forwarded on condition that the country of destination accepts mail of the classification involved. Articles received by either surface or air, which do not bear instructions forbidding their being forwarded, are forwarded by surface without an additional postage charge or fee. United States postage at the airmail rate to the country concerned must be paid on any article that is forwarded by air. Cross out the Par Avion label or endorsement on an airmail article that is forwarded by surface. See § 113.4 (b) and (c), and § 121.8(b) concerning forwarding of domestic mail.

(2) The provisions of paragraph (a)(2) of this section apply in the case of periodical publications addressed to persons who have filed change of address to another country.

* * * * *

NOTE: The corresponding Postal Manual sections are 224.31 and 224.32.

(R.S. 161, as amended; 5 U.S.C. 22, 39 U.S.C. 501, 505)

LOUIS J. DOYLE,
General Counsel.

[F.R. Doc. 64-6199; Filed, June 22, 1964; 8:48 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular No. 2146]

Replaced by Circ. 2147

PART 3610—MINERAL MATERIALS DISPOSALS

Subpart 3612—Free Use

On page 8042 of the FEDERAL REGISTER of August 7, 1963, there were published a notice and text of a proposed amendment to Part 259 of Title 43, Code of Federal Regulations.

The purpose of the amendment is to designate all public lands administered by the Bureaus of Land Management and Reclamation except those public lands at constructed Reclamation reservoirs, as free use areas for the collection by individuals of petrified wood for recreational and scientific purposes, and to provide for the designation of additional free use areas and for the modification or cancellation of any designated areas. It also establishes basic rules for collection of specimens on public lands under the jurisdiction of the Secretary of the Interior and permits the promulgation of additional rules as needed.

Interested persons were given 30 days within which to submit written comments, suggestions or objections to the proposed amendment. Numerous comments were received and have been carefully considered and discussed with representatives of the mineralogical federations. The suggestions received have led to revision of the proposal and changes in the following sections:

(1) All sections have been renumbered, retitled and rearranged in order to conform to the recodification published in the FEDERAL REGISTER on March 31, 1964. (29 F.R. 4301)

(2) In order to coordinate the free-use authorizations of the regulations, and to assure that free use permits may be issued for the removal of specimens for display in museums and similar institutions, the language of § 3612.1-2(a) has been amended.

(3) To increase the daily weight allowance and the maximum yearly allowance, § 3612.1-3(a)(1) has been amended.

(4) In order to specify the types of tools and equipment which may and may not be used in the excavation and removal of petrified wood, subparagraph (2) has been added to § 3612.1–3.

(5) A new subparagraph (3) has been added to § 3612.1–3(a) to establish clearly the distinction between permitted uses of petrified wood obtained under this section and under other sections of the regulation.

In addition, this amendment rearranges and renumbers the existing sections in Subpart 3612 relating to other minerals, without making any substantive changes, in order to coordinate them with the provisions on petrified wood. Therefore, this amendment completely recodifies Subpart 3612 and all existing material is superseded.

The amended regulations are adopted as set forth below and will become effective upon publication in the FEDERAL REGISTER.

Subpart 3612—Free Use

Sec.
3612.0–3 Authority.
3612.1 Free use of petrified wood by individuals.
3612.1–1 Program.
3612.1–2 Procedures.
3612.1–3 Rules for collection of specimens.
3612.2 Free use of mineral materials generally.
3612.2–1 Program.
3612.2–2 Procedures.
3612.2–3 Permits.
3612.2–4 Removal of minerals and improvements.

AUTHORITY: The provisions of this Subpart 3612 issued under 61 Stat. 681, as amended, 30 U.S.C. 601; 48 Stat. 1269, as amended, 43 U.S.C. 315; § 2, 76 Stat. 652, 30 U.S.C. 611, subnote.

§ 3612.0–3 Authority.

(a) *Free use of mineral materials in general.* Reference § 3610.0–3 for full citation of authority for free use disposal of mineral materials.

(b) *Free use of petrified wood by individuals.* Section 2 of the act of September 28, 1962 (76 Stat. 652) requires that the Secretary of the Interior shall provide by regulation that limited quantities of petrified wood may be removed without charge from those public lands which he shall specify. Section 2 of said act applies to the same public lands as the act of July 31, 1947, as amended (61 Stat. 681). Specifically excluded are lands in any national park, or national monument, or any Indian lands. The Secretary of the Interior has no authority under those statutes over lands under the jurisdiction of the Secretary of Agriculture.

§ 3612.1 Free use of petrified wood by individuals.

§ 3612.1–1 Program.

(a) *General.* To implement the policy of Congress, these regulations have been issued, authorizing the collection for noncommercial purposes of limited quantities of petrified wood by amateur collectors and by scientists, under terms and conditions which will be consistent with preservation of significant deposits as a public recreational resource for the enjoyment of the general public, maintenance of a source of materials for private and public collections, maintenance for the general public of areas for the pleasure of hunting for petrified wood specimens, and protection of other resources and projects on the lands. Subpart 3611 provides for purchase of petrified wood for commercial purposes.

(b) *Designation of free use areas.* (1) All public lands administered by the Bureaus of Land Management and Reclamation, except those public lands at constructed Reclamation reservoirs, within the Department of the Interior are open for free use removal of petrified wood with the exception of specific areas which may be closed to such collections by public notice or are otherwise closed to public entry. Free use areas under the jurisdiction of said Bureaus may be modified or cancelled by notices published in the FEDERAL REGISTER.

(2) The heads of other Bureaus in the Department of the Interior, or their delegates, may publish in the FEDERAL REGISTER designations, modifications, or cancellations of free use areas on lands under their jurisdiction.

(3) The Secretary of the Interior, or his delegate, may designate, modify, or cancel free use areas on public lands which are under the jurisdiction of other Federal departments or agencies other than the Department of Agriculture with the consent of the head of such other Federal department or agency concerned, upon publication of notice in the FEDERAL REGISTER.

(4) This section does not apply to lands under the jurisdiction of the Secretary of Agriculture.

§ 3612.1–2 Procedures.

(a) *Permits.* No application or permit for free use is required except for specimens over 250 pounds in weight. Permits to individuals for the removal of such specimens which the applicant certifies will be displayed to the public in a museum or similar institution may be issued by the authorized officer under the terms of § 3612.2.

§ 3612.1–3 Rules for collection of specimens.

(a) *General.* The following rules shall govern the removal without charge of specimens from public lands administered by the Department of the Interior:

(1) The maximum quantity of petrified wood that any one person is allowed to remove without charge per day is 25 pounds in weight plus one piece, provided that the maximum total amount that one person may remove in one calendar year shall not exceed 250 pounds. Pooling of quotas to obtain pieces larger than 250 pounds is not allowed.

(2) Except for the removal of museum pieces under permit issued pursuant to § 3612.2, no explosives and no power equipment, including but not limited to tractors, bulldozers, plows, power-shovels, trucks or semi-trailers, may be used for the excavation or removal of petrified wood obtained under the free use privilege. However, light trucks, up to one ton capacity, used in connection with campers or trailers or as a principal means of transportation, may be used for hauling purposes.

(3) Petrified wood obtained under this section must be for personal use and may not be bartered or sold to commercial dealers.

(4) Collection of specimens under the authority of this act must be accomplished in a manner that avoids unnecessary soil erosion or needless damage to the land or resources.

(b) *Additional rules.* The head of the Bureau having jurisdiction over a free use area, or his delegate, may establish and publish additional rules for the free use of petrified wood for noncommercial purposes, to supplement those included in paragraph (a) of this section.

§ 3612.2 Free use of mineral materials generally.

§ 3612.2–1 Program.

(a) *Permits to governmental units.* A free-use permit may be issued to any Federal or State agency, unit, or subdivision, including municipalities, without limitation as to the number of permits or as to the value of the mineral materials to be extracted or removed, provided that the applicant makes a satisfactory showing to the authorized officer that such materials will be used for a public project. Such permits will constitute a superior right to remove the materials and will continue in full force and effect, in accordance with its terms and provisions, as against any subsequent claim to or entry of the lands.

(b) *Permits to non-profit organizations.* A free-use permit issued to a non-profit association or corporation may not provide for the disposition of mineral materials having an in-place value in excess of $100 during any one calendar year. Such permittee is granted a right to remove materials while the permit remains in force and, in accordance with the provisions of the permit, as against a subsequent applicant who may wish to obtain the same mineral material by purchase. However, the mineral materials may not be removed by the permittee after the land has been included in a valid claim by reason of settlement, entry, mining location or similar rights obtained under the public land laws.

§ 3612.2–2 Procedures.

(a) *Applications.* An application for permit, in duplicate, must be made on Bureau approved forms and filed in any office or with any employee of the Bureau of Land Management authorized to issue a permit.

(b) *Term.* Permits shall be granted for periods not to exceed one year and shall terminate on the expiration dates shown therein unless extended by the authorized officer, such extension not to exceed one year. However, the authorized officer may grant permits to any Federal, State, or Territorial agency, unit, or subdivision including municipalities, for such periods as he may deem appropriate, not to exceed 10 years. The permittee must notify the officer in charge upon completion of removal.

June 23, 19

(c) *Assignment.* A free-use permit issued under this section may not be assigned.

§ 3612.2–3 Permits.

(a) *Conditions.* A free-use permit, on a form approved by the Director, shall incorporate the provisions, if any, governing the selection, removal, and use of the mineral materials. Free-use permits shall not be issued where the applicant owns or controls an adequate supply of the mineral materials to meet his needs. The material applied for must be for the applicant's own use and may not be bartered or sold. No mineral materials shall be removed until the permit is issued.

(b) *Bond.* A bond satisfactory to the authorized officer may be required as a guarantee of faithful performance of the provisions of the permit and applicable regulations.

(c) *Cancellation.* The authorized officer may cancel a permit if the permittee fails to observe its terms and conditions, or if the permit has been issued erroneously.

§ 3612.2–4 Removal of minerals and improvements.

(a) *Conservation practices.* All mineral materials disposed of under free-use shall be extracted or removed in accordance with approved conservation practices so as to preserve to the maximum extent feasible all scenic, recreational, watershed, and other values of the land and resources.

(b) *Removal by agent.* A free-use permittee may procure the mineral materials by agent. Such agent shall not, however, be paid more than fair compensation for the time, labor, and money expended in procuring the material and processing it, and no charge shall be made for the material itself. No part of the material may be used in payment for services in obtaining or processing it.

(c) *Removal of improvements.* Upon expiration of the permit period the permittee will be given 90 days to remove equipment, personal property, and any improvements he has placed on the land, except roads, culverts, and bridges which are to be left in place and in good condition, and which will become the property of the United States upon expiration of the 90-day removal period.

STEWART L. UDALL,
Secretary of the Interior.

JUNE 17, 1964.

[F.R. Doc. 64–6191; Filed, June 22, 1964; 8:47 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 15452, RM–586; FCC 64–549]

PART 73—RADIO BROADCAST SERVICES

Table of Assignments, FM Broadcast Stations, Columbus and Norfolk, Nebraska

1. The Commission has before it for consideration its Notice of Proposed Rule Making (FCC 64–391) issued in this proceeding on May 1, 1964, in which comments were invited on a proposal to switch Channels 245 and 266 between Columbus and Norfolk, Nebraska. It was also pointed out in the Notice that since Station KJSK–FM is authorized to operate on Channel 245 in Columbus, it would be necessary to modify the authorization for that station to specify operation on Channel 266 in lieu of 245. Comments were filed by Cornhusker Television Corp., KJSK, Inc., and WJAG, Inc.

2. Cornhusker Television Corporation, licensee of television Station KOLN–TV on Channel 10 at Lincoln, Nebraska, states that Station KOLN–TV places a Grade A signal over the city of Columbus, at a distance of about 45 miles from its transmitter, and that ever since FM Station KJSK–FM commenced program tests about February 19, 1964, hundreds of residents in and outside of the city of Columbus have been experiencing interference to the reception of KOLN–TV. They point out that the second harmonic of the FM signal falls very close to the picture carrier of KOLN–TV and that the interference caused is of two origins, direct second harmonic radiation from the transmitter, and overloading of TV receivers near the transmitter causing the generation of the second harmonic within the TV receivers themselves. Due to the widespread nature of the interference, the difficulty of removing the interference, and the availability of a simple solution to the problem by a shift in assignments, they urge that the instant proposal be expedited by the Commission. Cornhusker notes that Norfolk is about twice as far removed from the KOLN–TV transmitter as is Columbus; that it is beyond the Grade B contour of the station; and that a site for Channel 245 in Norfolk could carefully be selected away from the populous Norfolk area; and for these reasons the use of Channel 245 in Norfolk would not present any problem as far as KOLN–TV is concerned. They add, however, that they have no objection to the use of any other assignment in Norfolk such as Channel 290 or 294.

3. KJSK, Inc., permittee of radio Station KJSK–FM on Channel 245 in Columbus, Nebraska, supports the proposed substitution of Channel 266 for 245 in Columbus. It states that it has constructed KJSK–FM on Channel 245 in full accord with its authorization; that the "interference" which developed was due to a phenomenon of overloading in the TV receivers beyond its control; and that in order to accommodate the licensee of KOLN–TV and its viewers in the area it supports the instant proposal. It urges that at the same time as the switch in channels is made that its authorization be modified to specify the new channel in order that it may provide the needed FM service with the least possible disruption.

4. WJAG, Inc., prospective applicant for a new FM station in Norfolk, Nebraska, opposes the assignment of Channel 245 to Norfolk. It submits that a recent survey reveals that at least 50% of the people interviewed watched Channel 10 in Lincoln on a regular basis. It argues that since Norfolk is even farther from Lincoln than is Columbus that the removal of the "interference" problem from Columbus to Norfolk would make it worse for the viewers in the Norfolk area. WJAG suggests that an alternative solution, which would be more satisfactory, would be the assignment of Channel 294 to Norfolk rather than the proposed Channel 245. They point out that the only possibility of television interference from this assignment would be to the reception of Channel 13 from Sioux Falls but that due to the large distance from that city to Norfolk (110 miles) there are no substantial numbers of viewers of this station in Norfolk. A showing was made that Channel 294 could be assigned to Norfolk in full conformance with all the rules.

5. We have on several occasions stated that we believe the type of "interference" described in the subject petition is basically a problem of transmitter and receiver design and ordinarily not a factor in the assignment of FM channels. We have, however, in the past made changes in assignments where a simple solution to the problem was found to be acceptable to all the parties concerned. The proposed solution is simple and does not adversely affect any other station or the public interest. The proposed amendment would assign Channel 266 to Columbus. In a pending proceeding, Docket No. 15341, an interested party has proposed that Channel 268 be assigned to Grand Island, Nebraska. The assignment of Channel 266 to Columbus would be somewhat short-spaced to the proposed assignment in Grand Island. There are a number of other assignments which can be made to Grand Island and one of these will be assigned to that community instead of Channel 268. We are therefore of the view that the proposed amendment as modified by the WJAG counterproposal should be adopted.

6. Authority for the adoption of the amendments proposed herein is contained in sections 4(i), 303, and 307(b) of the Communications Act of 1934, as amended.

7. In view of the foregoing: *It is ordered,* That effective July 24, 1964, the FM Table of Assignments contained in § 73.202 of the Commission's rules and regulations is amended, insofar as the communities named are concerned, to read as follows:

City	*Channel No.*
Columbus, Nebraska	266
Norfolk, Nebraska	294

8. *It is further ordered,* That effective July 24, 1964, and pursuant to section 316(a) of the Communications Act of 1934, as amended, the outstanding construction permit held by KJSK, Inc., for radio Station KJSK–FM is modified to specify operation on Channel 266 in lieu of Channel 245, subject to the following conditions:

(a) The permittee shall inform the Commission in writing by July 13, 1964, of its acceptance of this modification.

(b) The permittee shall submit to the Commission by July 13, 1964, all the technical information normally required for the issuance of a modified construction permit for operation on Channel 266, in-

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

Subchapter C — Minerals Management

Circular 2147

Group 3600—Special Disposal Provisions

PART 3610—MINERAL MATERIALS DISPOSALS

Subpart 3610—Mineral Materials Disposals; General

Sec.
3610.0–3 Authority.
3610.0–5 Definitions.
3610.1 Mineral materials disposal policy; limitations.
3610.2 Trespass; penalty for unauthorized removal of materials.

Subpart 3611—Mineral Material Sales

3611.1 Advertising.
3611.2 Sales, appraisals, and measurements.
3611.3 Competitive sales.
3611.4 Negotiated sales.
3611.5 Qualifications of bidders and purchasers.
3611.6 Deposits with bids.
3611.7 Conduct of sales.
3611.8 Contracts.
3611.8–1 Award of contract.
3611.8–2 Contract forms.
3611.8–3 Performance bonds.
3611.8–4 Payments.
3611.8–5 Time for removal.
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3611.8–7 Reappraisals.
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Subpart 3612—Free Use

3612.0–3 Authority.
3612.1 Free use of petrified wood by individuals.
3612.1–1 Program.
3612.1–2 Procedures.
3612.1–3 Rules for collection of specimens.
3612.2 Free use of mineral materials generally.
3612.2–1 Program.
3612.2–2 Procedures.
3612.2–3 Permits.
3612.2–4 Removal of minerals and improvements.

AUTHORITY: The provisions of this Part 3610 issued under 61 Stat. 681, as amended, 69 Stat. 367; 30 U.S.C. 601 et seq.; 48 Stat. 1269; U.S.C. 315.

Subpart 3610—Mineral Materials Disposals; General

§ 3610.0–3 Authority.

(a) The Materials Act of July 31, 1947, amended by the acts of July 23, 1955 and September 25, 1962 (30 U.S.C. 601, 602), authorizes the disposal of mineral materials including, but not limited to, petrified wood and common varieties of sand, stone, gravel, pumice, pumicite, cinders and clay, in the public land of the United States (including the O&C lands as described in § 5040.0–3 of this chapter), if the disposal of such materials (1) is not otherwise expressly authorized by law, including, but not limited to the act of June 28, 1934, as amended (43 U.S.C. 315), and the United States mining laws, and (2) is not expressly prohibited by the laws of the United States, and (3) would not be detrimental to the public interest. Disposals of pumicite, within certain areas of the Katmai National Monument, Alaska, may also be made under this act, however, under appropriate contract conditions for the protection of the monument. Act of April 15, 1954 (68 Stat. 53).

(b) Where the lands have been withdrawn in aid of a function of a Federal department or agency other than the Department of the Interior, or of a State, county, municipality, water district or other local governmental subdivision or agency, the Secretary of the Interior may make disposals under the regulations in this part only, with the consent of such Federal department or agency or of such State or local governmental unit. The act provides that the Secretary of Agriculture shall dispose of materials from lands administered by him for national forest purposes or for purposes of title III of the Bankhead-Jones Farm Tenant Act of where withdrawn for any other function of the Department of Agriculture. See 36 CFR, Part 251 for Forest Service regulations relative to the disposal of materials in the national forests.

(c) Disposal of mineral materials under the act may not be made from any lands in any national park or national monument or from any Indian lands or lands set aside or held for the use or benefit of Indians including lands over which jurisdiction has been transferred to the Department of the Interior by Executive Order for the use of Indians.

(d) The act authorizes the Secretary of the Interior in his discretion to permit free use of mineral materials by any Federal or State governmental agency unit or subdivision, including municipalities, or any association or corporation not organized for profit for use other than for commercial or industrial purposes or resale.

§ 3610.0–5 Definitions.

(a) "Bureau" means Bureau of Land Management, Department of the Interior.

(b) "Director" means the Director of the Bureau of Land Management.

(c) "Authorized officer" means the Government official who has been duly authorized to sign a contract for the sale of mineral materials from public lands or to supervise operations and take action under such contract.

(d) "Mineral materials" include, but are not limited to "common varieties" of sand, stone, gravel, pumice, pumicite, cinders, clay and other mineral materials, and petrified wood.

(e) The word "act" when used in this part refers to the act of July 31, 1947, as amended.

§ 3610.1 Mineral materials disposal policy; limitations.

(a) Mineral material disposals may not be made under the act from public lands on which: (1) There are valid, existing claims to the land by reason of settlement, entry, or similar rights obtained under the public land laws; (2) there are any unpatented mining claims located either before or after July 23, 1955, which have not been cancelled by appropriate legal proceedings; (3) there are valid unpatented mining claims located on or after July 23, 1955, for valuable minerals that are not a "common variety", occurring in, or associated with "common variety" minerals.

(b) No sale of material shall be made under this part where the authorized officer determines that the aggregate damages to public lands and resources will exceed the benefits derived from such disposal. Sound conservation practices shall be exercised by all permittees or purchasers in the removal of materials under the provisions granted by this part.

(c) Mineral materials may be sold upon the request of any interested party or upon the authorized officer's own initiative.

§ 3610.2 Trespass; penalty for unauthorized removal of materials.

The extraction, severance, injury, or removal of timber or mineral materials from public lands under the jurisdiction of the Department of the Interior, except when authorized by law and the regulations of the Department, is an act of trespass. Trespassers will be liable in damages to the United States, and will be subject to prosecution for such unlawful acts. See Subpart 9239 of this chapter.

Subpart 3611—Mineral Material Sales

§ 3611.1 Advertising.

(a) Material sales offered by competitive bidding shall be advertised in a newspaper of general circulation in the area where the material is located and notice of the sale shall be posted in a conspicuous place in the office where bids are to be submitted. Such advertisement shall be published on the same day once a week for two consecutive weeks except that notice of sales amounting to $5,000 or less need be published only once.

(b) The advertisement of sale shall state the location by legal description of the tract or tracts on which the material is being offered, the kind of material, estimated quantities, the unit of measurement, appraised prices time and place for receiving and opening of bids, minimum deposit required, the access situation, the method of bidding, the office where additional information may be obtained, and such additional information as the authorized officer may deem necessary.

(c) Advertisement of materials appraised at $1,000 or less may be published or posted at the discretion of the authorized officer.

§ 3611.2 Sales, appraisals, and measurements.

(a) No materials, other than that designated in the contract or permit, shall be extracted unless designated in advance and written permission given by the authorized officer and payment made therefor.

(b) All materials to be sold shall be appraised and in no case shall it be sold at less than the appraised value.

(c) Such mineral material shall be measured by volume, weight, or truck tally, or combination of these methods, or such other form of measurement as the authorized officer determines to be in the public interest.

§ 3611.3 Competitive sales.

All sales other than those specified in § 3611.4 shall be made after inviting competitive bids through publication and

posting in conformance with § 3611.1. Sales shall not be held sooner than one week after the last advertisement. No competitive sales shall be offered by the authorized officer unless there is access to the sale area which is available to anyone who is qualified to bid.

§ 3611.4 Negotiated sales.

(a) (1) When it is determined by the authorized officer to be in the public interest and where the sale is of property for which it is impracticable to obtain competition, he may sell at not less than the appraised value, without advertising or calling for bids, mineral materials not exceeding $5,000 in value. Where it is impracticable to obtain competition and the materials are to be used in connection with the development of Federal lands under a mineral lease or leases issued by the United States, sales under this paragraph may be made in a sum not exceeding $10,000.

(2) The authorized officer may sell, at not less than the appraised value, without advertising or calling for bids, mineral materials not exceeding $10,000 in value when it is in the public interest and the contract is for materials to be used in connection with a public works improvement program on behalf of a Federal, State, or local governmental agency and the public exigency will not permit the delay incident to advertising.

(3) The total aggregate of negotiated sales which may be made in any one State to or for the benefit of any one person, partnership, association or corporation in any period of twelve consecutive months shall not exceed $10,000.

(b) Non-exclusive disposals may be made under this paragraph from the same deposit within areas designated by the State Director for this purpose. These pit sites are not to exceed 40 acres in size, except they may be enlarged as the initial 40-acre site is depleted. Such permits issued for sale or removal of material from established community pit sites will constitute a superior right to remove the material as against any subsequent claim or entry of the lands.

§ 3611.5 Qualification of bidders and purchasers.

A bidder or purchaser for the sale of mineral materials must be (a) an individual who is a citizen of the United States; (b) a partnership; (c) an unincorporated association composed wholly of such citizens; or (d) a corporation authorized to transact business in the States in which the mineral material is located. A bidder must also have submitted a deposit in advance of the sale as required by § 3611.6.

§ 3611.6 Deposits with bids.

Sealed bids must be accompanied by a deposit of not less than 10 percent of the appraised value of the mineral materials. For mineral materials offered at oral auction, bidders must make a deposit of not less than 10 percent of the appraised value prior to the opening of the bidding. The authorized officer may, in his discretion, require larger deposits. Deposits may be in the form of cash, money orders, bank drafts, cashier's or certified checks made payable to the Bureau of Land Management, or bid bonds of a corporate surety shown on the approved list of the United States Treasury Department. Upon conclusion of the bidding the bid deposits of all bidders, except the high bidder, shall be returned. Except for corporate surety bid bonds, the deposit of the successful bidder will be applied on the purchase price at the time the contract is signed by the authorized officer.

§ 3611.7 Conduct of sales.

(a) Bidding at competitive sales shall be conducted by the submission of written sealed bids, oral bids, or a combination of both as directed by the authorized officer. In the event of a tie in high sealed bids, the highest bidder shall be determined by oral auction among the high bidders. If no oral bid is made which is higher than the sealed bids, the highest bidder shall then be determined by lot. Except for the first bid, no oral bid will be considered or recorded which is not higher than the highest preceding bid. In oral auction sales the high bidder must confirm his bid in writing immediately upon being declared the high bidder.

(b) At the request of the authorized officer, or the officer conducting the sale, bidders must furnish evidence of qualification or if such evidence has already been furnished, make appropriate reference to the record containing it.

(c) When it is in the interest of the Government to do so the authorized officer may reject any or all bids and may

waive minor deficiences in the bids or the mineral material sale advertisment.

§ 3611.8—Contracts

§ 3611.8–1 Award of contract.

(a) The authorized officer may require the high bidder to furnish such information as is necessary to determine the ability of the bidder to preform the obligations of the contract. The contract shall be awarded to the high bidder, unless he is not qualified or responsible or unless all bids are rejected. If the high bidder is not qualified or responsible or fails to sign and return the contract together with the required performance bond, the contract may be offered and award for the amount of the high bid to the highest of the bidders who is qualified, responsible, and willing to accept the contract.

(b) Within 30 days after receipt of the contract the successful bidder shall sign and return the contract, together with any required performance bond: *Provided,* That the authorized officer may, in his discretion, extend such period an additional 30 days if the extension is applied for in writing and granted in writing within the first 30-day period If the successful bidder fails to comply writing within the first 30-day period. shall be forfeited as liquidated damages.

§ 3611.8–2 Contract forms.

All sales shall be made on contract forms approved by the Director. The authorized officer may include additional provisions in the contract to cover conditions peculiar to the sale area, such as road construction, protection of improvements, and watersheds and recreational values. Such additional provisions shall be made available for inspection by prospective bidders during the advertising period.

§ 3611.8–3 Performance bonds.

(a) A performance bond of not less than 20 percent of the total contract price will be required for contracts of $2,000 or more. When the total contract price is less than $2,000, bond requirements, if any, will be in the discretion of the authorized officer. The performance bond may be:

(1) Bond of a corporate surety shown on the approved list issued by the U.S. Treasury Department and executed on an approved standard form; or

(2) Personal surety bond, executed on an approved standard form if the authorized officer determines the principals and bondsmen are capable of carrying out the terms of the contract; or

(3) Cash bond; or

(4) Negotiable securities of the United States.

(b) Where the materials sale contract has required a bond in connection with construction of a road, the authorized officer may, upon satisfactory completion of the road construction, reduce the amount of the performance bond by the amount of all or a portion of the estimated road construction costs: *Provided, however,* That the total amount of the performance bond shall, in no event, be reduced below 20 percent of the total contract price.

§ 3611.8–4 Payments.

(a) No part of any mineral materials sold may be removed unless advance payment has been made as provided in the contract.

(b) For sales under $2,000 the full amount shall be paid prior to or at the time the authorized officer signs the contract. For sales of $2,000 or more the authorized officer may allow payment by installments as provided below:

(1) Installment payments shall be determined by the authorized officer but in no case shall be less than 10 percent of the total purchase price. For fixed unit sales the first installment shall be paid prior to or at the time the authorized officer signs the contract. The second installment shall be paid prior to the commencement of removal operations. Remaining installments shall be due and payable without notice whenever the value of the material removed shall equal the sum of the second and subsequent installments paid by the purchaser. The total amount of the purchase price must be paid prior to 60 days before the expiration date of the contract. The purchaser shall not be entitled to a refund on a fixed unit sale even though the amount of material removed or designated for removal may be less than the estimated total volume shown in the contract.

(2) For sales of all the material within a specified area, or sales for duration of production, installment payments shall be made in the same manner as in subparagraph (1) of this paragraph, except

that if it is determined after all designated materials has been removed that the total payments made under the contract exceed the total value of the material measured, such excess shall be returned to the purchaser within 60 days after such determination is made.

§ 3611.8–5 Time for removal.

Time for removing materials sold, except that sold under a duration of production contract, shall not exceed a period of two years except that such time for removal may be extended as provided in § 3611.8–6.

§ 3611.8–6 Extension of time.

If the purchaser shows that his delay in removal was due to causes beyond his control and without his fault or negligence, the authorized officer may grant an extension of time, not to exceed one year, upon written request of the purchaser. Such written request must be received not later than 30 days prior to the expiration date of the time for removal but not earlier than 90 days prior thereto. Additional extensions may be granted if the purchaser submits the same type of written request not later than 30 days prior to the expiration date of an extension but not earlier than 90 days prior thereto. No extension may be granted without reappraisal as provided in § 3611.8–7.

§ 3611.8–7 Reappraisals.

If an extension is granted as provided in § 3611.8–6 mineral materials remaining on the contract area, title to which has not passed to the purchaser, shall be reappraised by the authorized officer. Such reappraised prices shall become the new unit prices for the purpose of computing the reappraised total purchase price except that the new unit prices shall not be less than the unit prices that were in effect during the original time for removal or previous extension.

§ 3611.9 Assignments.

(a) The purchaser may not assign the contract or any interest therein without the written approval of the authorized officer. An assignment shall contain all the terms and conditions agreed upon by the parties thereto.

(b) The authorized officer will not approve any proposed assignment involving contract performance unless the assignee (1) is authorized to transact business in the State in which the mineral material is located; (2) submits such information as is necessary to assure the authorized officer of his ability to fulfill the contract; and (3) furnishes a performance bond as required by § 3611.8–3 or obtains a commitment from the previous surety to be bound by the assignment when approved. Upon approval of an assignment by the authorized officer, the assignee shall be entitled to all the rights and subject to all the obligations under the contract, and the assignor shall be released from any further liability under the contract.

Subpart 3612—Free Use

AUTHORITY: The provisions of this Subpart 3612 issued under 61 Stat. 681, as amended, 30 U.S.C. 601; 48 Stat. 1269, as amended, 43 U.S.C. 315; § 2, 76 Stat. 652, 30 U.S.C. 611, subnote.

§ 3612.0–3 Authority.

(a) *Free use of mineral materials in general.* Reference § 3610.0–3 for full citation of authority for free use disposal of mineral materials.

(b) *Free use of petrified wood by individuals.* Section 2 of the act of September 28, 1962 (76 Stat. 652) requires that the Secretary of the Interior shall provide by regulation that limited quantities of petrified wood may be removed without charge from those public lands which he shall specify. Section 2 of said act applies to the same public lands as the act of July 31, 1947, as amended (61 Stat. 681). Specifically excluded are lands in any national park, or national monument, or any Indian lands. The Secretary of the Interior has no authority under those statutes over lands under the jurisdiction of the Secretary of Agriculture.

§ 3612.1 Free use of petrified wood by individuals.

§ 3612.1–1 Program.

(a) *General.* To implement the policy of Congress, these regulations have been issued, authorizing the collection for noncommercial purposes of limited quantities of petrified wood by amateur collectors and by scientists, under terms and conditions which will be consistent with preservation of significant deposits as a public recreational resource for the enjoyment of the general public, mainte-

nance of a source of materials for private and public collections, maintenance for the general public of areas for the pleasure of hunting for petrified wood specimens, and protection of other resources and projects on the lands. Subpart 3611 provides for purchase of petrified wood for commercial purposes.

(b) *Designation of free use areas.* (1) All public lands administered by the Bureaus of Land Management and Reclamation, except those public lands at constructed Reclamation reservoirs, within the Department of the Interior are open for free use removal of petrified wood with the exception of specific areas which may be closed to such collections by public notice or are otherwise closed to public entry. Free use areas under the jurisdiction of said Bureaus may be modified or cancelled by notices published in the FEDERAL REGISTER.

(2) The heads of other Bureaus in the Department of the Interior, or their delegates, may publish in the FEDERAL REGISTER designations, modifications, or cancellations of free use areas on lands under their jurisdiction.

(3) The Secretary of the Interior, or his delegate, may designate, modify, or cancel free use areas on public lands which are under the jurisdiction of other Federal departments or agencies other than the Department of Agriculture with the consent of the head of such other Federal department or agency concerned, upon publication of notice in the FEDERAL REGISTER.

(4) This section does not apply to lands under the jurisdiction of the Secretary of Agriculture.

§ 3612.1–2 Procedures.

(a) *Permits.* No application or permit for free use is required except for specimens over 250 pounds in weight. Permits to individuals for the removal of such specimens which the applicant certifies will be displayed to the public in a museum or similar institution may be issued by the authorized officer under the terms of § 3612.2.

§ 3612.1–3 Rules for collection of specimens.

(a) *General.* The following rules shall govern the removal without charge of specimens from public lands administered by the Department of the Interior:

(1) The maximum quantity of petrified wood that any one person is allowed to remove without charge per day is 25 pounds in weight plus one piece, provided that the maximum total amount that one person may remove in one calendar year shall not exceed 250 pounds. Pooling of quotas to obtain pieces larger than 250 pounds is not allowed.

(2) Except for the removal of museum pieces under permit issued pursuant to § 3612.2, no explosives and no power equipment, including but not limited to tractors, bulldozers, plows, power-shovels, trucks or semi-trailers, may be used for the excavation or removal of petrified wood obtained under the free use privilege. However, light trucks, up to one ton capacity, used in connection with campers or trailers or as a principal means of transportation, may be used for hauling purposes.

(3) Petrified wood obtained under this section must be for personal use and may not be bartered or sold to commercial dealers.

(4) Collection of specimens under the authority of this act must be accomplished in a manner that avoids unnecessary soil erosion or needless damage to the land or resources.

(b) *Additional rules.* The head of the Bureau having jurisdiction over a free use area, or his delegate, may establish and publish additional rules for the free use of petrified wood for non-commercial purposes, to supplement those included in paragraph (a) of this section.

§ 3612.2 Free use of mineral materials generally.

§ 3612.2–1 Program.

(a) *Permits to governmental units.* A free-use permit may be issued to any Federal or State agency, unit, or subdivision, including municipalities, without limitation as to the number of permits or as to the value of the mineral materials to be extracted or removed, provided that the applicant makes a satisfactory showing to the authorized officer that such materials will be used for a public project. Such permits will constitute a superior right to remove the materials and will continue in full force and effect, in accordance with its terms

and provisions, as against any subsequent claim to or entry of the lands.

(b) *Permits to non-profit organizations.* A free-use permit issued to a non-profit association or corporation may not provide for the disposition of mineral materials having an in-place value in excess of $100 during any one calendar year. Such permittee is granted a right to remove materials while the permit remains in force and, in accordance with the provisions of the permit, as against a subsequent applicant who may wish to obtain the same mineral material by purchase. However, the mineral materials may not be removed by the permittee after the land has been included in a valid claim by reason of settlement, entry, mining location or similar rights obtained under the public land laws.

§ 3612.2–2 Procedures.

(a) *Applications.* An application for permit, in duplicate, must be made on Bureau approved forms and filed in any office or with any employee of the Bureau of Land Management authorized to issue a permit.

(b) *Term.* Permits shall be granted for periods not to exceed one year and shall terminate on the expiration dates shown therein unless extended by the authorized officer, such extension not to exceed one year. However, the authorized officer may grant permits to any Federal, State, or Territorial agency, unit, or subdivision including municipalities, for such periods as he may deem appropriate, not to exceed 10 years. The permittee must notify the officer in charge upon completion of removal.

(c) *Assignment.* A free-use permit issued under this section may not be assigned.

§ 3612.2–3 Permits.

(a) *Conditions.* A free-use permit, on a form approved by the Director, shall incorporate the provisions, if any, governing the selection, removal, and use of the mineral materials. Free-use permits shall not be issued where the applicant owns or controls an adequate supply of the mineral materials to meet his needs. The material applied for must be for the applicant's own use and may not be bartered or sold. No mineral materials shall be removed until the permit is issued.

(b) *Bond.* A bond satisfactory to the authorized officer may be required as a guarantee of faithful performance of the provisions of the permit and applicable regulations.

(c) *Cancellation.* The authorized officer may cancel a permit if the permittee fails to observe its terms and conditions, or if the permit has been issued erroneously.

§ 3612.2–4 Removal of minerals and improvements.

(a) *Conservation practices.* All mineral materials disposed of under free-use shall be extracted or removed in accordance with approved conservation practices so as to preserve to the maximum extent feasible all scenic, recreational, watershed, and other values of the land and resources.

(b) *Removal by agent.* A free-use permittee may procure the mineral materials by agent. Such agent shall not, however, be paid more than fair compensation for the time, labor, and money expended in procuring the material and processing it, and no charge shall be made for the material itself. No part of the material may be used in payment for services in obtaining or processing it.

(c) *Removal of improvements.* Upon expiration of the permit period the permittee will be given 90 days to remove equipment, personal property, and any improvements he has placed on the land, except roads, culverts, and bridges which are to be left in place and in good condition, and which will become the property of the United States upon expiration of the 90-day removal period.

This Circular replaces and supersedes all of Circulars 2146, 2119, 2057, and 2043, and the portion of Circular 2101 pertaining to 43 CFR Part 259.

GPO 843-082

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER A—GENERAL MANAGEMENT (1000)

[Group 1800—Public Administrative Procedures]

[Circular No. 2148]

PART 1850—HEARING PROCEDURES

Subpart 1852—Contest and Protest Proceedings

MISCELLANEOUS AMENDMENTS

1. New paragraph (e) to § 1852.1–4 is added to Title 43, Code of Federal Regulations, to read as follows:

§ 1852.1–4 Complaints.

* * * * *

(e) *Waiver of issues.* Any issue not raised by a private contestant in accordance with the provisions of paragraph (b) of this section, which was known to him, or could have been known to him by the exercise of reasonable diligence, shall be deemed to have been waived by him, and he shall thereafter be forever barred from raising such issue.

2. New paragraph (i) to § 1852.2–2 is added to Title 43, Code of Federal Regulations, to read as follows:

§ 1852.2–2 Proceedings in Government contests.

* * * * *

(i) The provisions of paragraph (e) of § 1852.1–4 shall be inapplicable.

STEWART L. UDALL,
Secretary of the Interior.

JULY 8, 1964.

[F.R. Doc. 64–7004; Filed, July 14, 1964; 8:46 a.m.]

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Circular Distribution List

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Circular No. 2149

Replaced by Circ. 2289

Regulations Pertaining to Mining Claims Under the General Mining Laws of 1872, Multiple Use, and Special Disposal Provisions.

As contained in Title 43 of the Code of Federal Regulations

U.S. Department of the Interior

Bureau of Land Management

Reprint of regulations current as of July 10, 1964

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PART 3000—INTRODUCTION

Subpart 3001—Introduction; General

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3001.0–6 Place of filing
3001.0–7 False statements
3001.0–8 Appeals and contests

AUTHORITY: The provisions of this Part 3000 issued under R.S. 2478; 43 U.S.C. 1201.

§ 3001.0–5 Definitions.

(a) *Secretary.* The Secretary of the Interior or any person duly authorized to exercise the powers vested in that officer.

(b) *Director.* The Director of the Bureau of Land Management or any person duly authorized to exercise the powers vested in that officer.

(c) *State Director or appropriate State Director.* The director of a Bureau of Land Management State office.

(d) *Land office or appropriate land office.* The land office of the Bureau of Land Management for the State or part of a State in which the lands covered by a permit, lease, application or entry, or application for such, are situated.

(e) *Manager or land office manager.* The manager in charge of a land office.

(f) *Mining supervisor.* The Regional Mining Supervisor of the Geological Survey for the region in which the lands under permit or lease are situated.

§ 3001.0–6 Place of filing.

Documents must be filed in the land office having jurisdiction over the selected lands, or in the Bureau of Land Management, Washington, D.C., 20240 when there is no district land office within the State, except applications for lands in North or South Dakota shall be filed in the land office at Billings, Montana, applications for lands in Nebraska and Kansas in the land office at Cheyenne, Wyoming, and for lands in Oklahoma in the land office at Santa Fe, New Mexico.

§ 3001.0–7 False statements.

18 U.S.C. 1001 makes it a crime for any person knowingly and wilfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statements as to any matter within its jurisdiction.

§ 3001.0–8 Appeals and contests.

Any person adversely affected by any official action or decision of any subordinate official may appeal therefrom to the Director and from the Director's decision to the Secretary. All appeals shall be governed by the rules of practice in Parts 1840 and 1850 of this chapter. Nothing in this group shall be construed to prevent any interested party from seeking judicial review as authorized by law.

Group 3400—Mining Claims Under the General Mining Laws of 1872

PART 3400—MINING CLAIMS UNDER THE GENERAL MINING LAWS OF 1872; GENERAL

Subpart 3400—General Mining Laws of 1872

Sec.
3400.1 Lands subject to location and purchase.
3400.2 Minerals under the mining laws.
3400.3 Mineral locations in stock driveway withdrawals.
3400.4 Mineral locations in reclamation withdrawals.

Subpart 3401—Lands and minerals subject to location

3401.1 Manner of initiating rights under locations.
3401.2 Who may make locations.

AUTHORITY: The provisions of this Subpart 3400 issued under R.S. 2478; 43 U.S.C. 1201.

Subpart 3400—General Mining Laws of 1872

§ 3400.1 Lands subject to location and purchase.

(a) Vacant public surveyed or unsurveyed lands are open to prospecting, and upon discovery of mineral, to location and purchase. The act of June 4, 1897 (30 Stat. 36), provides that "any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry," notwithstanding the reservation. This makes mineral lands in the forest reserves in the public land states, subject to location and entry under the general mining laws in the usual manner. Lands entered or patented under the stockraising homestead law (title to minerals and the use of the surface necessary for mining purposes can be acquired), lands entered under other agricultural laws but not perfected, where prospecting can be done peaceably are open to location.

(b) Mining locations may be made in the States of Alaska, Arizona, Arkansas, California, Colorado, Florida, Idaho, Louisiana, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

(1) The laws of the United States relating to mining claims were extended to Alaska by section 8 of the act of May 17, 1884 (23 Stat. 26), and sections 15, 16, and 26 of the act of June 6, 1900 (31 Stat. 327, 329; 48 U.S.C. 119, 120, 381–383) again, in terms, extended the mining laws of the United States and all right incident thereto, to the State, with certain further provisions with respect to the acquisition of claims thereunder.

(i) The law in respect to placer claims in Alaska was modified and amended by the act of August 1, 1912 (37 Stat. 242) and section 4 of that act was amended by the act of March 3, 1925 (43 Stat. 1118).

(ii) By the act of May 4, 1934 (43 Stat. 663; 48 U.S.C. 381a) the acts of August 1, 1912, and March 3, 1925, were repealed and the general mining laws of the United States applicable to placer mining claims were declared to be in full force and effect in the State.

(c) Lands in national parks and national monuments are not subject to mining location, except where specifically authorized by law.

(1) The mining laws were extended to the Death Valley National Monument, California, by the act of June 13, 1933 (48 Stat. 139; 16 U.S.C. 447) with a reservation of surface rights to the United States.

(2) Mining locations may be made on lands in the Mount McKinley National Park, under the provisions of the act of February 26, 1917 (39 Stat. 938; 16 U.S.C. 347–354) which expressly provides that the United States mining laws shall be applicable to mineral lands in that area.

(3) Regulations relative to mining in the Glacier Bay National Monument are contained in Subpart 3636 of this chapter.

(4) Mining locations in the Olympic National Park, Washington, made prior to June 29, 1943, are governed by Subpart 3632 of this chapter.

(5) Mining locations in the Organ Pipe Cactus National Monument may be made pursuant to Subpart 3633 of this chapter.

(d) Lands in Indian reservations are not subject to the United States mining laws, except in the Papago Indian Reservation from June 18, 1943, to May 27, 1955. See Subpart 3635 of this chapter.

(e) For mining claims in national forests, see paragraph (a) of this section.

(f) Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grand Lands, located in Oregon, are subject to mining locations in accordance with provisions of Subpart 3631 of this chapter.

(g) Mining claims may be located on power site withdrawals subject to the provisions of Subpart 3530 of this chapter.

(h) Mining claims for fissionable source materials may be located on lands known to be valuable for coal under certain conditions. See Subpart 3520 of this chapter.

(i) Lands segregated for classification or sold under the Alaska Public Sale Act of August 30, 1949 (63 Stat. 679; 48 U.S.C. 364a–364e), are subject to mineral appropriation under the provision of section 3 of that act for the development of the reserved minerals under applicable laws, including the United States mining laws, and subject to the rules and regulations of the Secretary of the Interior necessary to provide protection and compensation for damages from mining activities to the surface and improvements thereon. See Subpart 2241 of this chapter.

(j) Lands patented under the Color of Title Act (43 U.S.C. 1068), by exchange under the Taylor Grazing Act (43 U.S.C. 415g) and by Forest Exchanges (16 U.S.C. 485) with mineral reservation to the United States, are subject to appropriation under the mining or mineral leasing laws for the reserved materials. See Subpart 2244 of this chapter. Minerals in acquired lands of the United States are not subject to mining location but the minerals therein may be acquired in accordance with the regulations contained in Subpart 3220–3227.

§ 3400.2 Minerals under the mining laws.

Whatever is recognized as a mineral by the standard authorities, whether metallic or other substance, when found in public lands in quantity and quality sufficient to render the lands valuable on account thereof, is treated as coming within the purview of the mining laws. Deposits of oil, gas, coal, potassium, sodium, phosphate, oil shale, native asphalt, solid and semisolid bitumen, and bituminous rock including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried, the deposits of sulphur in Louisiana and New Mexico belonging to the United States can be acquired under the mineral leasing laws (see § 3100.0–3), and are not subject to location and purchase under the United States mining laws. The so-called "common variety" mineral materials and petrified wood on the public lands may be acquired under the Materials Act, as amended (see Part 3610).

§ 3400.3 Mineral locations in stock driveway withdrawals.

(a) Under authority of the provisions of the act of January 29, 1929 (45 Stat. 1144; 43 U.S.C. 300), the rules, regulations, and restrictions in this section are prescribed for prospecting for minerals of the kinds subject to the United States mining laws, and the locating of mining claims upon discovery of such minerals, in lands within stock driveway withdrawals made before or after May 4, 1929.

(b) All prospecting and mining operations shall be conducted in such manner as to cause no interference with the use of the surface of the land for stock driveway purposes, except such as may actually be necessary.

(c) While a mining location will be made in accordance with the usual procedure for locating mining claims, and will describe a tract of land, having due regard to the limitations of area fixed by the mining laws, the locator will be limited under his location to the right to the minerals discovered in the land and to mine and remove the same, and to occupy so much of the surface of the claim as may be required for all purposes reasonably incident to the mining and removal of the minerals.

(d) All excavations and other mining work and improvements made in prospecting and mining operations shall be fenced or otherwise protected to prevent the same from being a menace to stock on the land.

(e) No watering places shall be inclosed, nor proper and lawful access of stock thereto prevented, nor the watering of stock thereat interfered with.

(f) Prospecting for minerals and the location of mining claims on lands included in such withdrawals shall be subject to the provisions and conditions of the mining laws and the regulations thereunder.

(g) Mining claims on lands within stock driveway withdrawals, located prior to May 4, 1929, and subsequent to the date of the withdrawal, may be held and perfected subject to the provisions and conditions of the act and the regulations in this section.

(h) Every application for patent for any minerals located subject to this act must bear on its face, before being executed by the applicant and presented for filing, the following notation:

Subject to the provisions of section 10 of the act of December 29, 1916 (39 Stat. 862), as amended by the act of January 29, 1929 (45 Stat. 1144).

Like notation will be made by the manager on the final certificates issued on such a mineral application.

(i) Patents issued on such applications will contain the added condition:

That this patent is issued subject to the provisions of the act of December 29, 1916 (39 Stat. 862), as amended by the act of January 29, 1929 (45 Stat. 1144), with reference to the disposition, occupancy and use of the land as permitted to an entryman under said act.

§ 3400.4 Mineral locations in reclamation withdrawals.

(a) The act of April 23, 1932 (47 Stat. 136; 43 U.S.C. 154), authorizes the Secretary of the Interior in his discretion to open to location, entry and patent under the general mining laws with reservation of rights, ways and easements, public lands of the United States which are known or believed to contain valuable deposits of minerals and which are withdrawn from development and acquisition because they are included within the limits of withdrawals made pursuant to section 3 of the reclamation act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 416).

(b) Application to open lands to location under the act may be filed by a person, association or corporation qualified to locate and purchase claims under the general mining laws. The application must be executed in duplicate and filed in the land office of the district in which the lands are situated, must describe the land the applicant desires to locate, by legal subdivision if surveyed, or by metes and bounds if unsurveyed, and must set out the facts upon which is based the knowledge or belief that the lands contain valuable mineral deposits, giving such detail as the applicant may be able to furnish as to the nature of the formation, kind and character of the mineral deposits. Each application shall be accompanied by a $10 nonrefundable service charge.

(c) When the application is received in the Bureau of Land Management, if found satisfactory, the duplicate will be transmitted to the Bureau of Reclamation with request for report and recommendation. In case the Bureau of Reclamation makes an adverse report on the application, it will be rejected subject to right of appeal.

(d) If in the opinion of the Bureau of Reclamation the lands may be opened under the act without prejudice to the rights of the United States, the report will recommend the reservation of such ways, rights and easements considered necessary or appropriate, and/or the form of contract to be executed by the intending locator or entryman as a condition precedent to the vesting of any rights in him, which may be necessary for the protection of the irrigation interests.

Subpart 3401—Lands and Minerals Subject to Location

§ 3401.1 Manner of initiating rights under locations.

Rights to mineral lands, owned by the United States, are initiated by prospecting for minerals thereon, and, upon the discovery of mineral, by locating the lands upon which such discovery has been made. A location is made by staking the corners of the claim, posting notice of location thereon and complying with the State laws, regarding the recording of the location in the county recorder's office, discovery work, etc. As supplemental to the United States mining laws there are State statutes relative to location, manner of recording of mining claims, etc., in the State, which should also be observed in the location of mining claims. Information as to State laws can be obtained locally or from State officials.

§ 3401.2 Who may make locations.

Citizens of the United States, or those who have declared their intention to become such, including minors who have reached the age of discretion and corporations organized under the laws of any State, may make mining locations. Agents may make locations for qualified locators.

PART 3410—NATURE AND CLASSES OF MINING CLAIMS

Subpart 3410—Nature and Classes of Mining Claims; General

Sec.
3410.0–6 Classes of mining claims.

Subpart 3411—Lode Claims

3411.1 Lodes located previous to May 10, 1872.
3411.2 Lodes must not have been adversely claimed.
3411.3 Length of lode claims.
3411.4 Extent of surface ground.
3411.5 Restriction on width of claims by local laws.

Subpart 3412—Describing Locations

3412.1 Defining of locations by claimants.

Subpart 3413—Discovery

3413.1 Discovery required before location.
3413.2 Discovery work.

Subpart 3414—Location

3414.1 Location notice; monumenting.
3414.2 Location notices to be recorded.

Subpart 3415—Tunnel Sites

3415.1 Possessory right of tunnel proprietor.
3415.2 Location of tunnel claims.
3415.3 Recording of notices.

Subpart 3416—Placer Claims

3416.1 Maximum allowable acreage.
3416.2 Discovery.
3416.3 Locations authorized in 10 acre units.
3416.4 Manner of describing 10 acre units.
3416.5 Conformity of placer claims to the public land surveys.
3416.6 Annual expenditures.
3416.7 Building-stone placers.
3416.8 Saline placers.
3416.9 Petroleum placers.

Subpart 3417—Millsites

3417.0–3 Authority.
3417.1 Required use.

AUTHORITY: The provisions of this Part 3410 issued under R.S. 2478; 43 U.S.C. 1201.

Subpart 3410—Nature and Classes of Mining Claims; General

§ 3410.0–6 Classes of mining claims.

Mining claims are of two distinct classes: Lode claims and placers.

Subpart 3411—Lode Claims

§ 3411.1 Lodes located previous to May 10, 1872.

The status of lode claims located or patented previous to May 10, 1872, is not changed with regard to their extent along the lode or width of surface; but the claim is enlarged by sections 2322 and 2328, Revised Statutes (30 U.S.C. 26, 33), by investing the locator, his heirs or assigns, with the right to follow, upon the conditions stated therein, all veins, lodes, or ledges, the top or apex of which lies inside of the surface lines of his claim.

§ 3411.2 Lodes must not have been adversely claimed.

It is to be distinctly understood that the law limits the possessory right to veins, lodes, or ledges, other than the one named in the original location, to such as were not adversely claimed on May 10, 1872, and that where such other vein or ledge was so adversely claimed at that date the right of the party so adversely claiming is in no way impaired by the act of that date.

§ 3411.3 Length of lode claims.

From and after May 10, 1872, any person who is a citizen of the United States, or who has declared his intention to become a citizen, may locate, record, and hold a mining claim of 1,500 linear feet along the course of any mineral vein or lode subject to location; or an association of persons, severally qualified as above, may make joint location of such claim of 1,500 feet, but in no event can a location of a vein or lode made after May 10, 1872, exceed 1,500 feet along the course thereof, whatever may be the number of persons composing the association.

§ 3411.4 Extent of surface ground.

With regard to the extent of surface ground adjoining a vein or lode, and claimed for the convenient working thereof, the act of May 10, 1872, provides that the lateral extent of locations of veins or lodes made after said date shall in no case exceed 300 feet on each side of the middle of the vein at the surface, and that no such surface rights shall be limited by any mining regulations to less than 25 feet on each side of the middle of the vein at the surface, except where adverse rights existing on May 10, 1872, may render such limitation necessary; the end lines of such claims to be in all cases parallel to each other. Said lateral measurements cannot extend beyond 300 feet on either side of the middle of the vein at the surface, or such distance as is allowed by local laws. For example: 400 feet cannot be taken on one side and 200 feet on the other. If, however, 300 feet on each side are allowed, and by reason of prior claims but 100 feet can be taken on one side, the locator will not be restricted to less than 300 feet on the other side; and when the locator does not determine by exploration where the middle of the vein at the surface is, his discovery shaft must be assumed to mark such point.

§ 3411.5 Restriction on width of claims by local laws.

No lode located after May 10, 1872, can exceed a parallelogram 1,500 feet in length by 600 feet in width, but whether surface ground of that width can be taken depends upon the local regulations or State or Territorial laws in force in the several mining districts. No such local regulations or State or Territorial laws shall limit a vein or lode claim to less than 1,500 feet along the course thereof, whether the location is made by one or more persons, nor can surface rights be limited to less than 50 feet in

width unless adverse claims existing on May 10, 1872, render such lateral limitation necessary.

Subpart 3412—Describing Locations

§ 3412.1 Defining of locations by claimants.

Section 5 of the act of May 10, 1872, now section 2324, Revised Statutes (30 U.S.C. 28), requires that "the location must be distinctly marked on the ground so that its boundaries can be readily traced." Locators can not exercise too much care in defining their locations at the outset, inasmuch as section 5 of the act of May 10, 1872 (17 Stat. 92; 30 U.S.C. 28) requires that all records of mining locations made subsequent to the date of said act shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located, by reference to some natural object or permanent monument, as will identify the claim.

Subpart 3413—Discovery

§ 3413.1 Discovery required before location.

No lode claim shall be located until after the discovery of a vein or lode within the limits of the claim, the object of which provision is evidently to prevent the appropriation of presumed mineral ground for speculative purposes, to the exclusion of bona fide prospectors, before sufficient work has been done to determine whether a vein or lode really exists.

§ 3413.2 Discovery work.

The claimant should, therefore, prior to locating his claim, unless the vein can be traced upon the surface, sink a shaft or run a tunnel or drift to a sufficient depth therein to discover and develop a mineral-bearing vein, lode, or crevice; should determine, if possible, the general course of such vein in either direction from the point of discovery, by which direction he will be governed in marking the boundaries of his claim on the surface.

Subpart 3414—Location

§ 3414.1 Location notice; monumenting.

(a) The location notice should give the course and distance as nearly as practicable from the discovery shaft on the claim to some permanent, well-known points or objects, such, for instance, as stone monuments, blazed trees, the confluence of streams, point of intersection of well-known gulches, ravines, or roads, prominent buttes, hills, etc., which may be in the immediate vicinity, and which will serve to perpetuate and fix the locus of the claim and render it susceptible of identification from the description thereof given in the record of locations in the district, and should be duly recorded.

(b) In addition to the foregoing data, the claimant should state the names of adjoining claims, or, if none adjoin, the relative positions of the nearest claims; should drive a post or erect a monument of stones at each corner of his surface ground, and at the point of discovery or discovery shaft should fix a post, stake, or board, upon which should be designated the name of the lode, the name or names of the locators, the number of feet claimed, and in which direction from the point of discovery, it being essential that the location notice filed for record, in addition to the foregoing description, should state whether the entire claim of 1,500 feet is taken on one side of the point of discovery, or whether it is partly upon one and partly upon the other side thereof, and in the latter case, how many feet are claimed upon each side of such discovery point. As to the importance of monuments, and as to their paramount authority, see the act of April 28, 1904 (33 Stat. 545; 30 U.S.C. 34), which amended section 2327 R. S.

§ 3414.2 Location notices to be recorded.

The location notice must be filed for record in all respects as required by the State or Territorial laws, and local rules and regulations, if there be any.

Subpart 3415—Tunnel Sites

§ 3415.1 Possessory right of tunnel proprietor.

The effect of section 2323, Revised Statutes (30 U.S.C. 27), is to give the proprietors of a mining tunnel run in good faith the possessory right to 1,500 feet of any blind lodes cut, discovered, or intersected by such tunnel, which were not previously known to exist within 3,000 feet from the face or point of commencement of such tunnel, and to prohibit other parties, after the commencement of the tunnel, from prospecting for and making locations of lodes on the line thereof and within said distance of 3,000 feet, unless such lodes appear upon the surface or were previously known to exist. The term "face," as used in said section, is construed and held to mean the first working face formed in the tunnel, and to signify the point at which the tunnel actually enters cover; it being from this point that the 3,000 feet are to be counted upon which prospecting is prohibited as aforesaid. Section 2323 of the Revised Statutes provides: "Failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel."

§ 3415.2 Location of tunnel claims.

To avail themselves of the benefits of this provision of law, the proprietors of a mining tunnel will be required, at the time they enter cover as aforesaid, to give proper notice of their tunnel location by erecting a substantial post, board, or monument at the face or point

of commencement thereof, upon which should be posted a good and sufficient notice, giving the names of the parties or company claiming the tunnel right; the actual or proposed course or direction of the tunnel, the height and width thereof, and the course and distance from such face or point of commencement to some permanent well-known objects in the vicinity by which to fix and determine the locus in manner heretofore set forth appplicable to locations of veins or lodes, and at the time of posting such notice they shall, in order that miners or prospectors may be enabled to determine whether or not they are within the lines of the tunnel, establish the boundary lines thereof, by stakes or monuments placed along such lines at proper intervals, to the terminus of the 3,000 feet from the face or point of commencement of the tunnel, and the lines so marked will define and govern as to specific boundaries within which prospecting for lodes not previously known to exist is prohibited while work on the tunnel is being prosecuted with reasonable diligence.

§ 3415.3 Recording of notices.

A full and correct copy of such notice of location defining the tunnel claim must be filed for record with the mining recorder of the district, to which notice must be attached the sworn statement or declaration of the owners, claimants, or projectors of such tunnel, setting forth the facts in the case; stating the amount expended by themselves and their predecessors in interest in prosecuting work thereon; the extent of the work performed, and that it is bona fide their intention to prosecute work on the tunnel so located and described with reasonable diligence for the development of a vein or lode, or for the discovery of mines, or both, as the case may be. This notice of location must be duly recorded, and, with the said sworn statement attached, kept on the recorder's files for future reference.

Subpart 3416—Placer Claims

§ 3416.1 Maximum allowable acreage.

(a) By section 2330 of the Revised Statutes (30 U.S.C. 36), it is declared that no location of a placer claim made after July 9, 1870, shall exceed 160 acres for any one person or association of persons, which location shall conform to the United States surveys.

(b) Section 2331 of the Revised Statutes (30 U.S.C. 35) provides that all placer-mining claims located after May 10, 1872, shall conform as nearly as practicable with the United States system of public land surveys and the rectangular subdivisions of such surveys, and such locations shall not include more than 20 acres for each individual claimant.

(c) The foregoing provisions of law are construed to mean that after July 9, 1870, no location of a placer claim can be made to exceed 160 acres, whatever may be the number of locators associated together, or whatever the local regulations of the district may allow; and that from and after May 10, 1872, no location can exceed 20 acres for each individual participating therein; that it, a location by two persons can not exceed 40 acres, and one by three persons can not exceed 60 acres.

§ 3416.2 Discovery.

But one discovery of mineral is required to support a placer location, whether it be of 20 acres by an individual, or of 160 acres or less by an association of persons.

§ 3416.3 Locations authorized in 10-acre units.

By section 2330 of the Revised Statutes (30 U.S.C. 36), authority is given for subdividing 40-acre legal subdivisions into 10-acre tracts. These 10-acre tracts should be considered and dealt with as legal subdivisions, and an applicant having a placer claim which conforms to one or more of such 10-acre tracts, contiguous in case of two or more tracts, may make entry thereof, after the usual proceedings, without further survey or plat.

§ 3416.4 Manner of describing 10-acre units.

A 10-acre subdivision may be described, for instance if situated in the extreme northeast of the section, as the "NE. ¼ of the NE. ¼ of the NE. ¼" of the section, or, in like manner, by appropriate terms, wherever situated; but in addition to this description, the notice must give all the other data required in a mineral application, by which parties may be put on inquiry as to the land sought to be patented. The proofs submitted with applications must show clearly the character and extent of the improvements upon the premises.

§ 3416.5 Conformity of placer claims to the public land surveys.

(a) All placer-mining claims located after May 10, 1872, shall conform as near as practicable with the United States system of public-land surveys and the rectangular subdivisions of such surveys, whether the locations are upon surveyed or unsurveyed lands.

(b) Conformity to the public-land surveys and the rectangular subdivisions thereof will not be required where compliance with such requirement would necessitate the placing of the lines thereof upon other prior located claims or where the claim is surrounded by prior locations.

(c) Where a placer location by one or two persons can be entirely included within a square 40-acre tract, by three or four persons within two square 40-acre tracts placed end to end, by five or six persons within three square 40-acre tracts, and by seven or eight persons within four square 40-acre tracts, such locations will be regarded as within the requirements where strict conformity is impracticable.

(d) Whether a placer location conforms reasonably with the legal subdivisions of the public survey is a

question of fact to be determined in each case, and no location will be passed to patent without satisfactory evidence in this regard. Claimants should bear in mind that it is the policy of the Government to have all entries whether of agricultural or mineral lands as compact and regular in form as reasonably practicable, and that it will not permit or sanction entries or locations which cut the public domain into long narrow strips or grossly irregular or fantastically shaped tracts. (Snow Flake Fraction Placer, 37 L.D. 250.)

§ 3416.6 Annual expenditures.

The annual expenditure to the amount of $100, required by section 2324, Revised Statutes (30 U.S.C. 28), must be made upon placer as well as lode locations.

§ 3416.7 Building-stone placers.

The act of August 4, 1892 (27 Stat. 348; 30 U.S.C. 161), extends the mineral land laws so as to bring lands chiefly valuable for building stone within the provisions of said laws.

§ 3416.8 Saline placers.

(a) Under the act approved January 31, 1901 (31 Stat. 745; 30 U.S.C. 162), extending the mining laws to saline lands, the provisions of the law relating to placer-mining claims are extended to all States so as to permit the location and purchase thereunder of all unoccupied public lands containing salt springs, or deposits of salt in any form, and chiefly valuable therefor, with the proviso, "That the same person shall not locate or enter more than one claim hereunder." The saline placer act was superseded by the Mineral-Leasing Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181 et seq.), whereby saline (sodium) deposits were made subject to disposal by leases instead of mining locations.

(b) Rights obtained by location under the placer-mining laws are assignable, and the assignee may make the entry in his own name; so, under this act a person holding as assignee may make entry in his own name: *Provided,* That he has not held under this act, at any time, either as locator or entryman, any other lands; his right is exhausted by having held under this act any particular tract, either as locator or entryman, either as an individual or as a member of an association. It follows, therefore, that no application for patent or entry, made under this act, shall embrace more than one single location.

(c) In order that the conditions imposed by the proviso, as set forth in paragraph (b) of this section, may duly appear, the application for patent must contain or be accompanied by a specific statement by each person whose name appears therein that he never has, either as an individual or as a member of an association, located or entered any other lands under the provisions of this act. The application for patent should also be accompanied by a showing, fully disclosing the qualifications as defined by the proviso, of the applicants' predecessors in interest.

§ 3416.9 Petroleum placers.

The act of February 11, 1897 (29 Stat. 526), provides for the location and entry of public lands chiefly valuable for petroleum or other mineral oils, and entries of that nature made prior to the passage of said act are to be considered as though made thereunder. This act was superseded by the Mineral Leasing Act of February 25, 1920 (41 Stat. 437).

Subpart 3417—Millsites

§ 3417.0–3 Authority.

The location and patenting of lands for millsite purposes is authorized by R.S. 2337 as amended by the Act of March 18, 1960. The act, 30 U.S.C. 42, reads as follows:

Patents for nonmineral lands.

(a) Where nonmineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such nonadjacent surface ground may be embraced, and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location made of such nonadjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by sections 21–24, 26–28, 29, 30, 33–48, 50–52, and 71–76 of this title for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his mill site, as provided in this section.

(b) Where nonmineral land is needed by the proprietor of a placer claim for mining, milling, processing, beneficiation, or other operations in connection with such claim, and is used or occupied by the proprietor for such purposes, such land may be included in an application for a patent for such claim, and may be patented therewith subject to the same requirements as to survey and notice as are applicable to placers. No location made of such nonmineral land shall exceed five acres and payment for the same shall be made at the rate applicable to placer claims which do not include a vein or lode. (As amended Mar. 18, 1960, Pub. Law 86–390, 74 Stat. 7.)

§ 3417.1 Required use.

A millsite is required to be used or occupied distinctly and explicitly for mining or milling purposes in connection with the lode or placer claim with which it is associated. A custom or independent millsite may be located for the erection and maintenance of a quartz mill or reduction works.

PART 3420—ASSESSMENT WORK

Subpart 3420—Assessment Work; General

Sec.
3420.1 Annual assessment work.
3420.2 Inclusion of surveys in assessment work.
3420.3 Failure to perform annual assessment work.
3420.4 Determination of right of possession between rival claimants.
3420.5 Annual assessment work not required after patent certificate.
3420.6 Failure of a co-owner to contribute to annual assessment work.

Subpart 3421—Deferments

3421.0-3 Authority.
3421.1 Conditions under which deferment may be granted.
3421.2 Filing of petition for deferment, contests.
3421.3 Notice of action on petition to be recorded.
3421.4 Period for which deferment may be granted.
3421.5 When deferred assessment work is to be done.

AUTHORITY: The provisions of this Part 3420 issued under R.S. 2478; 43 U.S.C. 1201.

Subpart 3420—Assessment Work; General

§ 3420.1 Annual assessment work.

In order to hold the possessory right to a lode or placer location made after May 10, 1872, not less than $100 worth of labor must be performed or improvements made thereon annually. The period within which the work required to be done shall commence at 12 o'clock meridian on the 1st day of September succeeding the date of location of each claim. Where a number of contiguous claims are held in common, the aggregate expenditure that would be necessary to hold all the claims may be made on any one claim. Cornering locations are held not to be contiguous.

§ 3420.2 Inclusion of surveys in assessment work.

(a) In addition to the several types of work that may fulfill the annual labor requirement, the requirement can also be satisfied by conducting geological, geochemical and geophysical surveys. P.L. 85-876, Act of September 2, 1958 (72 Stat. 1701; 30 U.S.C. 28-1-2). Such surveys must be conducted by qualified experts and verified by a detailed report filed in the county or recording district office in which the claim is located. This report must set forth fully the following:

(1) The location of the work performed in relation to the point of discovery and boundaries of the claim.

(2) Nature, extent and cost of the work performed.

(3) The basic findings of the surveys.

(4) The name, address and professional background of the person or persons conducting the work.

Such surveys may not be applied as labor for more than two consecutive years or for more than a total of five years on any one mining claim. Each survey shall be nonrepetitive of any previous survey of the same claim. Such surveys will not apply toward the statutory provision requiring the expenditure of $500 for each claim for mineral patent.

(b) As used in this section—

(1) The term "geological surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of geology as they relate to the search for and discovery of mineral deposits;

(2) The term "geochemical surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of chemistry as they relate to the search for and discovery of mineral deposits;

(3) The term "geophysical surveys" means surveys on the ground for mineral deposits through the employment of generally recognized equipment and methods for measuring physical difference between rock types or discontinuities in geological formations;

(4) The term "qualified expert" means an individual qualified by education or experience to conduct geological, geochemical, or geophysical surveys, as the case may be.

§ 3420.3 Failure to perform annual assessment work.

Failure to make the expenditure or perform the labor required upon a location made before or since May 10, 1872, will subject a claim to relocation unless the original locator, his heirs, assigns, or legal representatives have resumed work after such failure and before relocation.

§ 3420.4 Determination of right of possession between rival claimants.

The annual expenditure of $100 in labor or improvements on a mining claim, required by section 2324 of the Revised Statutes (30 U.S.C. 28), is, with the exception of certain phosphate placer locations, validated by the act of January 11, 1915 (38 Stat. 792; 30 U.S.C. 131), under which regulations were issued March 31, 1915 (Circ. 396), 44 L.D. 46, solely a matter between rival or adverse claimants to the same mineral land, and goes only to the right of possession, the determination of which is committed exclusively to the courts.

§ 3420.5 Annual assessment work not required after patent certificate.

Annual expenditure is not required subsequent to entry, the date of issuing the patent certificate being the date contemplated by statute.

§ 3420.6 Failure of a co-owner to contribute to annual assessment work.

Upon the failure of any one of several co-owners to contribute his proportion of the required expenditures, the co-owners, who have performed the labor or made the improvements as required, may, at the expiration of the year, give such delinquent co-owner personal no-

tice in writing, or notice by publication in the newspaper published nearest the claim for at least once a week for 90 days; and if upon the expiration of 90 days after such notice in writing, or upon the expiration of 180 days after the first newspaper publication of notice, the delinquent co-owner shall have failed to contribute his proportion to meet such expenditures or improvements, his interest in the claim by law passes to his co-owners who have made the expenditures or improvements as aforesaid. Where a claimant alleges ownership of a forfeited interest under the foregoing provision, the statement of the publisher as to the facts of publication, giving dates, and a printed copy of the notice published, should be furnished, and the claimant must state that the delinquent co-owner failed to contribute his proper proportion within the period fixed by the statute.

Subpart 3421—Deferments

§ 3421.0–3 Authority.

The act of June 21, 1949 (63 Stat. 214; 30 U.S.C. Sup. 28b-c), provides for the temporary deferment in certain unavoidable contingencies of the performance of annual assessment work on mining claims held by location in the United States. The relief under this act is in addition to any other relief available under any other act of Congress with respect to the suspension of annual assessment work on mining claims.

§ 3421.1 Conditions under which deferment may be granted.

The deferment may be granted where any mining claim or group of claims in the United States is surrounded by lands over which a right-of-way for the performance of assessment work has been denied or is in litigation or is in the process of acquisition under State law or where other legal impediments exist which affect the right of the claimant to enter upon the surface of such claim or group of claims or to gain access to the boundaries thereof.

§ 3421.2 Filing of petition for deferment, contests.

(a) In order to obtain temporary deferment, the claimant must file with the manager of the land office for the district in which the lands are situated, a petition in duplicate requesting such deferment. No particular form of petition is required, but the applicant must attach to one copy thereof a copy of the notice to the public required by the act which shows that it has been filed or recorded in the office in which the notices or certificates of location were filed or recorded. The petition and duplicate should be signed by at least one of the owners of each of the locations involved, shall give the names of the claims, dates of location, and the date of the beginning of the one-year period for which deferment is requested. Each petition shall be accompanied by a $10 nonrefundable service charge.

(b) If the petition is based upon the denial of a right-of-way, it must state the nature and ownership of the land or claim thereto over which it is necessary to obtain a right-of-way in order to reach the surrounded claims, and the land description thereof by legal subdivisions if the land is surveyed, and give full details as to why present use of the right-of-way is denied or prevented and as to the steps which have been taken to acquire the right to use it. The petition should state whether any other right-of-way is available and if so, give reasons why it is not feasible or desirable to use that right-of-way.

(c) If the petition is based on other legal impediments, they must be set out and their effect described in detail.

§ 3421.3 Notice of action on petition to be recorded.

The claimant must file or record, in the office in which he filed or recorded his notice of petition, a copy of the order or decision disposing of the petition.

§ 3421.4 Period for which deferment may be granted.

If the showing made is satisfactory, the authorized officer of the Bureau of Land Management will grant a deferment for an initial period not exceeding one year. The period shall begin on the date requested in the petition unless the approval sets a different date. Upon petition, the one year period may be renewed for another year if justifiable conditions exist. If the conditions justifying deferment are removed prior to the specified termination date of the deferment period, the deferment shall automatically be ended as of such earlier date.

§ 3421.5 When deferred assessment work is to be done.

All deferred assessment work may be begun at any time after the termination of the deferment but must be completed not later than the end of the assessment year commencing after the removal or cessation of the causes for the deferment or the expiration of any deferments granted under the act and shall be in addition to the annual assessment work required by law for such year.

PART 3430—DISPOSAL OF RESERVED MINERALS

Subpart 3430—Disposal of Reserved Minerals; General

Sec.
3430.0–1 Purpose.

Subpart 3431—Under Act of July 17, 1914

3431.1 Minerals reserved by the Act of July 17, 1914, subject to mineral location, entry and patenting.
3431.2 Mineral subject to disposition.
3431.3 Provisions of the mineral patent.

Subpart 3432—Under Stockraising Homestead Act

3432.1 Mineral reservation in entry and patent; mining and removal of reserved deposits; bonds.
3432.2 Mineral reservation in patent; conditions to be noted on mineral applications.

Subpart 3430—Disposal of Reserved Minerals; General

§ 3430.0–1 Purpose.

The Act of July 20, 1956 (70 Stat. 592), which amended the act of July 17, 1914 (38 Stat. 509; 30 U.S.C. sec. 122), was enacted to permit the disposal of certain reserved mineral deposits under the mining laws of the United States.

Subpart 3431—Under Act of July 17, 1914

AUTHORITY: The provisions of this Subpart 3431, issued under R.S. 2478; 43 U.S.C. 1201. Interpret or apply sec. 2, 38 Stat. 509, as amended; 30 U.S.C. 1220.

§ 3431.1 Minerals reserved by the act of July 17, 1914, subject to mineral location, entry and patenting.

The act of July 17, 1914 (38 Stat. 509; 30 U.S.C. sec. 122), as amended by the act of July 20, 1956 (70 Stat. 592), provides in part as follows:

* * * such deposits to be subject to disposal by the United States only as shall be hereafter expressly directed by law: *Provided, however,* That all mineral deposits heretofore or hereafter reserved to the United States under this Act which are subject, at the time of application for patent to valid and subsisting rights acquired by discovery and location under the mining laws of the United States made prior to the date of the Mineral Leasing Act of February 25, 1920 (41 Stat. 437), shall hereafter be subject to disposal to the holders of those valid and subsisting rights by patent under the mining laws of the United States in force at the time of such disposal. Any person qualified to acquire the reserved deposits may enter upon said lands with a view of prospecting for the same upon the approval of the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages of the crops and improvements on such lands by reason of such prospecting, the measure of any such damage to be fixed by agreement of parties or by a court of competent jurisdiction. Any person who has acquired from the United States the title to or the right to mine and remove the reserved deposits, should the United States dispose of the mineral deposits in lands, may re-enter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removel of the minerals therefrom; and mine and remove such minerals, upon payment of damages caused thereby to the owner of the land, or upon giving a good and sufficient bond or undertaking therefor in an action instituted in any competent court to ascertain and fix said damages:

* * * * *

§ 3431.2 Mineral subject to disposition.

The act of 1956 applies only to:

(a) Any mineral discovered and located under the United States mining laws prior to February 25, 1920, and reserved to the United States under the act of July 17, 1914 (38 Stat. 509; 30 U.S.C. 122), in the patent for the land and held under a valid mining location subsisting on the date that the patent application for the mining claim was field. "Oil" reserved under the act of 1914 has been held to include oil shale. See 52 L.D. 329.

(b) Any of the other minerals within the boundaries of the mining claim reserved to the United States under the act of 1914 in the patent for the land but excepting such of those minerals as may be covered by a mineral lease or permit until such time as the rights either under the lease or permit are extinguished or terminated.

§ 3431.3 Provisions of the mineral patent.

(a) Each patent issued under the act of July 20, 1956, shall name discovered reserved mineral as well as the other minerals reserved to the United States and shall recite that in accordance with the reservation in the land patent, the mineral patentee, and its successors (or his heirs and assigns, if a person), shall have the right to prospect for, mine and remove the mineral or minerals for which the patent is issued.

(b) If, when the mineral entry is approved for patenting, there is a subsisting mineral lease or permit for any of the reserved minerals, the mineral patent shall identify the lease or permit and shall expressly except and exclude from the mineral conveyed by the patent, the mineral covered by the lease or permit, but shall provide that the exception and exclusion shall be effective only so long as any rights under either the lease or permit shall exist.

Subpart 3432—Under Stockraising Homestead Act

AUTHORITY: The provisions of this Subpart 3432 issued under sec. 11, 39 Stat. 865; 43 U.S.C. 301.

§ 3432.1 Mineral reservation in entry and patent; mining and removal of reserved deposits; bonds.

(a) Section 9 of the Act of December 29, 1916 (39 Stat. 864; 43 U.S.C. 299), provides that all entries made and patents issued under its provisions shall contain a reservation to the United States of all coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same; also that the coal and other mineral deposits in such lands shall be subject to disposal by the United States in accordance with the

provisions of the coal and mineral land laws in force at the time of such disposal.

(b) Said section 9 also provides that any person qualified to locate and enter the coal or other mineral deposits, or having the right to mine and remove the same under the laws of the United States, shall have the right at all times to enter upon the lands entered or patented under the act, for the purpose of prospecting for the coal or other mineral therein, provided he shall not injure, damage, or destroy the permanent improvements of the entryman or patentee and shall be liable to and shall compensate the entryman or patentee for all damages to the crops on the land by reason of such prospecting.

(c) It is further provided in said section 9 that any person who has acquired from the United States the coal or other mineral deposits in any such land or the right to mine and remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining or removal of the coal, or other minerals, first, upon securing the written consent or waiver of the homestead entryman or patentee; or, second, upon payment of the damages to crops or other tangible improvements to the owner thereof under agreement; or, third, in lieu of either of the foregoing provisions, upon the execution of a good and sufficient bond or undertaking to the United States for the use and benefit of the entryman or owner of the land, to secure payment of such damages to the crops or tangible improvements of the entryman or owner as may be determined and fixed in an action brought upon the bond or undertaking in a court of competent jurisdiction against the principal and sureties thereon. This bond on Form 4-684 must be executed by the person who has acquired from the United States the coal or other mineral deposits reserved, as directed in said section 9, as principal, with two competent individual sureties, or a bonding company which has complied with the requirements of the act of August 13, 1894 (28 Stat. 279; 6 U.S.C. 6-13), as amended by the act of March 23, 1910 (36 Stat. 241; 6 U.S.C. 8, 9), and must be in the sum of not less than $1,000. Qualified corporate sureties are preferred and may be accepted as sole surety. Except in the case of a bond given by a qualified corporate surety there must be filed therewith affidavits of justification by the sureties and a certificate by a judge or clerk of a court of record, a United States district attorney, a United States commissioner, or a United States postmaster as to the identity, signatures, and financial competency of the sureties. Said bond, with accompanying papers, must be filed with the manager of the land office of the district wherein the land is situate, and there must also be filed with such bond evidence of service of a copy of the bond upon the homestead entryman or owner of the land.

(d) If at the expiration of 30 days after the receipt of the aforesaid copy of the bond by the entryman or owner of the land no objections are made by such entryman or owner of the land and filed with the manager against the approval of the bond by them, he may, if all else be regular, approve said bond. If, however, after receipt by the homestead entryman or owner of the lands of copy of the bond, such homestead entryman or owner of the land timely objects to the approval of the bond by said manager, the said officer will immediately give consideration to said bond, accompanying papers, and objections filed as aforesaid to the approval of the bond, and if, in consequence of such consideration he shall find and conclude that the proffered bond ought not to be approved, he will render decision accordingly and give due notice thereof to the person proffering the bond, at the same time advising such person of his right of appeal to the Director of the Bureau of Land Management from the action in disapproving the bond so filed and proffered. If, however, the manager, after full and complete examination and consideration of all the papers filed, is of the opinion that the proffered bond is a good and sufficient one and that the objections interposed as provided herein against the approval thereof do not set forth sufficient reasons to justify him in refusing to approve said proffered bond, he will, in writing, duly notify the homestead entryman or owner of the land of his decision in this regard and allow such homestead entryman or owner of the land 30 days in which to appeal to the Director of the Bureau of Land Management. If appeal from the adverse decision of the manager be not timely filed by the person proffering the bond, the manager will indorse upon the bond "disapproved" and other appropriate notations, and close the case. If, on the other hand, the homestead entryman or owner of the lands fails to timely appeal from the decision of the manager adverse to the contentions of said homestead entryman or owners of the lands, said manager may, if all else be regular, approve the bond.

(e) The coal and other mineral deposits in the lands entered or patented under the act of December 29, 1916, will become subject to existing laws, as to purchase or lease, at any time after allowance of the homestead entry, unless the lands or the coal or other mineral deposits are, at the time of said allowance, withdrawn or reserved from disposition.

§ 3432.2 Mineral reservation in patent; conditions to be noted on mineral applications.

(a) There will be incorporated in patents issued on homestead entries under this act the following:

Excepting and reserving, however, to the United States all the coal and other minerals in the lands so entered and patented,

and to it, or persons authorized by it, the right to prospect for, mine, and remove all the coal and other minerals from the same upon compliance with the conditions, and subject to the provisions and limitations, of the act of December 29, 1916 (39 Stat. 862).

(b) Mineral applications for the reserved deposits disposable under the act must bear on the face of the same, before being signed by the declarant or applicant and presented to the manager, the following notation:

Patents shall contain appropriate notations declaring same subject to the provisions of the act of December 29, 1916 (39 Stat. 862), with reference to disposition, occupancy, and use of the land as permitted to an entryman under said act.

PART 3440—SURVEYS OF MINING CLAIMS

Subpart 3440—Surveys of Mining Claims; General

Sec.
3440.1 Application for survey.
3440.2 Survey must be made subsequent to recording notice of location.
3440.3 Plats and field notes of mineral surveys.

Subpart 3441—Surveys

3441.1 Particulars to be observed in mineral surveys.
3441.2 Certificate of expenditures and improvements.
3441.3 Mineral surveyor's report of expenditures and improvements.
3441.4 Supplemental proof of expenditures and improvements.
3441.5 Amended mineral surveys.

Subpart 3442—Mineral Surveyors

3442.1 Extent of duties.
3442.2 Assistants.

Subpart 3443—Contract for Surveys

3443.1 Payment.

Subpart 3444—Appointment and Employment of Mineral Surveyors

3444.1 Appointment.
3444.2 Employment.

Subpart 3445—Plats and Notices

3445.1 Payment of charges of the public survey office.

Subpart 3446—Posting

3446.1 Plat and notice to be posted on claim.
3446.2 Proof of posting on the claim.

AUTHORITY: The provisions of this Part 3440 issued under R.S. 2478; 43 U.S.C. 1201.

Subpart 3440—Surveys of Mining Claims; General

§ 3440.1 Application for survey.

The claimant is required, in the first place, to have a correct survey of his claim made under authority of the proper cadastral engineer, such survey to show with accuracy the exterior surface boundaries of the claim, which boundaries are required to be distinctly marked by monuments on the ground. He is required to have a correct survey where patent is applied for and where the mining claim is in vein or lode formation, or covers lands not surveyed in accordance with the U.S. system of rectangular surveys, or where the mining claim fails to conform with the legal subdivisions of the federal surveys. Application for authorization of survey should be made to the appropriate State Director. In States for which there is no area office, applications for survey should be made to the Director of the Bureau of Land Management, Washington, D.C.

§ 3440.2 Survey must be made subsequent to recording notice of location.

The survey and plat of mineral claims required to be filed in the proper land office with application for patent must be made subsequent to the recording of the location of the claim (if the laws of the State or the regulations of the mining district require the notice of location to be recorded), and when the original location is made by survey of a mineral surveyor such location survey cannot be substituted for that required by the statute, as above indicated. All matters relating to the duties of mineral surveyors, and to the field and office procedure to be observed in the execution of mineral surveys, are set forth in Chapter X of the Manual of Instructions for the Survey of the Public Lands of the United States, 1947.

§ 3440.3 Plats and field notes of mineral surveys.

When the patent is issued, one copy of the plat and field notes shall accompany the patent and be delivered to the patentee.

Subpart 3441—Surveys

§ 3441.1 Particulars to be observed in mineral surveys.

(a) The following particulars should be observed in the survey of every mining claim:

(1) The exterior boundaries of the claim, the number of feet claimed along the vein, and, as nearly as can be ascertained, the direction of the vein, and the number of feet claimed on the vein in each direction from the point of discovery or other well-defined place on the claim should be represented on the plat of survey and in the field notes.

(2) The intersection of the lines of the survey with the lines of conflicting prior surveys should be noted in the field notes and represented upon the plat.

(3) Conflicts with unsurveyed claims, where the applicant for survey does not claim the area in conflict, should be shown by actual survey.

(4) The total area of the claim embraced by the exterior boundaries should be stated, and also the area in conflict with each intersecting survey, substantially as follows:

	Acres
Total area of claim	10.50
Area in conflict with survey No. 302	1.56
Area in conflict with survey No. 948	2.33
Area in conflict with Mountain Maid lode mining claim, unsurveyed	1.48

(b) It does not follow that because mining surveys are required to exhibit all conflicts with prior surveys the area of conflict are to be excluded. The field notes and plat are made a part of the application for patent, and care should be taken that the description does not inadvertently exclude portions intended to be retained. The application for patent should state the portions to be excluded in express terms.

§ 3441.2 Certificate of expenditures and improvements.

(a) The claimant at the time of filing the application for patent, or at any time within the 60 days of publication, is required to file with the manager a certificate of the office cadastral engineer

that not less than $500 worth of labor has been expended or improvements made, by the applicant or his grantors, upon each location embraced in the application, or if the application embraces several contiguous locations held in common, that an amount equal to $500 for each location has been so expended upon, and for the benefit of, the entire group; that the plat filed by the claimant is correct; that the field notes of the survey, as filed, furnish such an accurate description of the claim as will, if incorporation in a patent, serve to identify the premises fully, and that such reference is made therein to natural objects or permanent monuments as will perpetuate and fix the locus thereof.

(b) In case of a lode and mill-site claim in the same survey the expenditure of $500 must be shown upon the lode claim.

§ 3441.3 Mineral surveyor's report of expenditures and improvements.

(a) In the mineral surveyor's report of the value of the improvements all actual expenditures and mining improvements made by the claimant or his grantors, having a direct relation to the development of the claim, must be included in the estimate.

(b) The expenditures required may be made from the surface or in running a tunnel, drifts, or crosscuts for the development of the claim. Expenditures for drill holes for the purpose of prospecting and securing data upon which further development of a group of lode mining claims held in common may be based are available toward meeting the statutory provision requiring an expenditure of $500 as a basis for patent as to all of the claims of the group situated in close proximity to such common improvement. Improvements of any other character, such as buildings, machinery, or roadways, must be excluded from the estimate, unless it is shown clearly that they are associated with actual excavations, such as cuts, tunnels, shafts, etc., are essential to the practical development of and actually facilitate the extraction of mineral from the claim.

(c) Improvements made by a former locator who has abandoned his claim cannot be included in the estimate, but should be described and located in the notes and plat.

§ 3441.4 Supplemental proof of expenditures and improvements.

If the value of the labor and improvements upon a mineral claim is less than $500 at the time of survey the mineral surveyor may file with the cadastral engineer supplemental proof showing $500 expenditure made prior to the expiration of the period of publication.

§ 3441.5 Amended mineral surveys.

(a) Inasmuch as amended surveys are ordered only by special instructions from the Bureau of Land Management, and the conditions and circumstances peculiar to each separate case and the object sought by the required amendment, alone govern all special matters relative to the manner of making such survey and the form and subject matter to be embraced in the field notes thereof, but few general rules applicable to all cases can be laid down.

(b) The expense of amended surveys, including amendment of plat and field notes, and office work in the Bureau of Land Management office will be borne by the claimant.

(c) The amended survey must be made in strict conformity with, or be embraced within, the lines of the original survey. If the amended and original surveys are identical, that fact must be clearly and distinctly stated in the field notes. If not identical, a bearing and distance must be given from each established corner of the amended survey to the corresponding corner of the original survey. The lines of the original survey, as found upon the ground, must be laid down upon the preliminary plat in such manner as to contrast and show their relation to the lines of the amended survey.

Subpart 3442—Mineral Surveyors

§ 3442.1 Extent of duties.

The duty of a mineral surveyor in any particular case ceases when he has executed the survey and returned the field notes and preliminary plat, with his report, to the cadastral engineer. He will not be allowed to prepare for the mining claimant the papers in support of his application for patent. He is not permitted to combine the duties of surveyor and notary public in the same case by administering oaths. It is preferable that both preliminary and final oaths of assistants should be taken before some officer duly authorized to administer oaths, other than the mineral surveyor. In cases, however, where great delay, expense, or inconvenience would result from a strict compliance with this section, the mineral surveyor is authorized to administer the necessary oaths to his assistants, but in each case where this is done, he will submit to the proper cadastral engineer a full written report of the circumstances which required his stated action; otherwise he must have absolutely nothing to do with the case, except in his official capacity as surveyor. He will not employ field assistants interested therein in any manner.

§ 3442.2 Assistants.

The employing of claimants, their attorneys, or parties in interest, as assistants in making surveys of mineral claims will not be allowed.

Subpart 3443—Contract for Surveys

§ 3443.1 Payment.

(a) The claimant is required, in all cases, to make satisfactory arrangements with the surveyor for the payment for his services and those of his assistants in making the survey, as the United States will not be held responsible for the same.

(b) The state director has no jurisdiction to settle differences relative to the

payment of charges for field work, between mineral surveyors and claimants. These are matters of private contract and must be enforced in the ordinary manner, i.e., in the local courts. The Department has, however, authority to investigate charges affecting the official actions of mineral surveyors, and will, on sufficient cause shown, suspend or revoke their appointment.

Subpart 3444—Appointment and Employment of Mineral Surveyors

§ 3444.1 Appointment.

Pursuant to section 2334 of the Revised Statutes (30 U.S.C. 39), each state director will appoint as surveyors for the survey of mining claims applicants found to be competent, to the extent needed to meet the demand for that class of work. Each appointee shall qualify as prescribed by the state director and shall furnish a performance bond of not less than $5,000 before entering on duty. Each mineral surveyor shall be eligible to survey mining claims in the States within the region in which he is appointed and in adjoining States. Each state director shall maintain a register showing the names and addresses of mineral surveyors appointed for the area and eligible for the survey of mining claims. The state director shall furnish each adjoining State with a copy of such register, and shall advise them of any changes therein.

§ 3444.2 Employment.

A mineral claimant may employ any United States mineral surveyor qualified as indicated in paragraph (a) of this section to make the survey of his claim. All expenses of the survey of mining claims and the publication of the required notices of application for patent are to be borne by the mining claimants.

Subpart 3445—Plats and Notices

§ 3445.1 Payment of charges of the public survey office.

With regard to the platting of the claim and other office work in the Bureau of Land Management office, including the preparation of the copies of the plat and field notes to be furnished the claimant, that office will make an estimate of the cost thereof, which amount the claimant will deposit with it to be passed to the credit of the fund created by "Deposits by Individuals for Surveying Public Lands."

Subpart 3446—Posting

§ 3446.1 Plat and notice to be posted on claim.

The claimant is required to post a copy of the plat of survey in a conspicuous place upon the claim, together with notice of his intention to apply for a patent therefor, which notice will give the date of posting, the name of the claimant, the name of the claim, the number of the survey, the mining district and county, and the names of adjoining and conflicting claims as shown by the plat survey.

§ 3446.2 Proof of posting on the claim.

After posting the said plat and notice upon the premises the claimant will file with the proper manager a copy of such plat and the field notes of survey of the claim, accompanied by the statement of at least two credible witnesses that such plat and notice are posted conspicuously upon the claim, giving the date and place of such posting, a copy of the notice so posted to be attached to and form a part of said statement.

PART 3450—LODE CLAIM PATENT APPLICATION

Subpart 3450—Lode Claim Patent Application; General

Sec.
3450.1 Aplication for patent.
3450.2 Service charge.
3450.3 Evidence of title.
3450.4 Evidence relating to destroyed or lost records.
3450.5 Statement required that land is unreserved, unoccupied, unimproved, and unappropriated.

Subpart 3451—Citizenship

3451.1 Citizenship of corporations and of associations acting through agents.
3451.2 Citizenship of individuals.
3451.3 Trustee to disclose nature of trust.

Subpart 3452—Possessory Rights

3452.1 Right by occupancy.
3452.2 Certificate of court required.
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Subpart 3453—Publication of Notice

3453.1 Newspaper designation.
3453.2 Contents of published notice.
3453.3 Manager to designate newspaper.
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3453.5 Charges for publication.
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Subpart 3455—Entry and Transfers

3455.1 Allowance of entry; transfers subsequent to application not recognized.

Subpart 3456—Diligent Prosecution

3456.1 Failure to prosecute application with diligence.

Subpart 3457—Application Processing Upon Contest or Protest

3457.1 Resumption of patent proceedings after suspension due to adverse claim or protest.

Subpart 3458—Patents for Mining Claims

3458.1 Land descriptions in patents.

AUTHORITY: The provisions of Part 3450 issued under R.S. 2478; 43 U.S.C. 1201.

Subpart 3450—Lode Claim Patent Application; General

§ 3450.1 Application for patent.

(a) At the time the proof of posting is filed the claimant must file an application for patent showing that he has the possessory right to the claim, in virtue of a compliance by himself (and by his grantors, if he claims by purchase) with the mining rules, regulations, and customs of the mining district or State in which the claim lies, and with the mining laws of Congress, such statement to narrate briefly, but as clearly as possible, the facts constituting such compliance, the origin of his possession, and the basis of his claim to a patent. The application should contain a full description of the kind and character of the vein or lode and should state whether ore has been extracted therefrom; and if so, in what amount and of what value. It should also show the precise place within the limits of each of the locations embraced in the application where the vein or lode has been exposed or discovered and the width thereof. The showing in these regards should contain sufficient data to enable representatives of the Government to confirm the same by examination in the field and also enable the Bureau of Land Management to determine whether a valuable deposit of mineral actually exists within the limits of each of the locations embraced in the application.

(b) Every application for patent, based on a mining claim located after August 1, 1946, shall state whether the claimant has or has not had any direct or indirect part in the development of the atomic bomb project. The application must set forth in detail the exact nature of the claimant's participation in the project, and must also state whether as a result of such participation he acquired any confidential, official information as to the existence of deposits of uranium, thorium, or other fissionable source materials in the lands covered by his application.

(c) In applying for patent to a mining claim embracing land lying partly within one land district and partly within another, a full set of papers must be filed in each office, except that one abstract of title and one proof of patent expenditures will be sufficient. Only one newspaper publication and one posting on the claim will be required, but proof thereof must be filed in both offices, the statements as to posting plat and notice on the claim to be signed within the respective land districts, as well, also, as all of the other statements required in mineral patent proceedings, except such as, under the law, may be signed outside of the land district wherein the land applied for is situated. Publication, payment of fees, and the purchase price of the land will be further governed by the provisions of § 1823.4(a) and 1861.2 of this chapter.

§ 3450.2 Service charge.

The service charge payable to the Bureau of Land Management for filing and acting upon applications for mineral-land patents is $25 to be paid by the applicant for patent at the time of filing. This charge is not refundable.

§ 3450.3 Evidence of title.

(a) Each patent application must be supported by either a certificate of title or an abstract of title certified to by the legal custodian of the records of locations and transfers of mining claims or by an abstracter of titles. The certificate of title or certificate to an abstract of title must be by a person, association, or corporation authorized by the State laws to execute such a certificate and acceptable to the Bureau of Land Management.

(b) A certificate of title must conform substantially to a form approved by the Director.

(c) Each certificate of title or abstract

of title must be accompanied by single copies of the certificate or notice of the original location of each claim, and of the certificates of amended or supplemental locations thereof, certified to by the legal custodian of the record of mining locations.

(d) A certificate to an abstract of title must state that the abstract is a full, true, and complete abstract of the location certificates or notices, and all amendments thereof, and of all deeds, instruments, or actions appearing of record purporting to convey or to affect the title to each claim.

(e) The application for patent will be received and filed if the certificate of title or an abstract is brought down to a day reasonably near the date of the presentation of the application and shows full title in the applicant, who must as soon as practicable thereafter file a supplemental certificate of title or an abstract brought down so as to include the date of the filing of the application.

§ 3450.4 Evidence relating to destroyed or lost records.

In the event of the mining records in any case having been destroyed by fire or otherwise lost, a statement of the fact should be made, and secondary evidence of possessory title will be received, which may consist of the statement of the claimant, supported by those of any other parties cognizant of the facts relative to his location, occupancy, possession, improvements, etc.; and in such case of lost records, any deeds, certificates of location or purchase, or other evidence which may be in the claimant's possession and tend to establish his claim, should be filed.

§ 3450.5 Statement required that land is unreserved, unoccupied, unimproved, and unappropriated.

Each person making application for patent under the mining laws, for lands in Alaska, must furnish a duly corroborated statement showing that no portion of the land applied for is occupied or reserved by the United States, so as to prevent its acquisition under said laws; that the land is not occupied or claimed by natives of Alaska; and that the land is unoccupied, unimproved and unappropriated by any person claiming the same other than the applicant.

Subpart 3451—Citizenship

§ 3451.1 Citizenship of corporations and of associations acting through agents.

The proof necessary to establish the citizenship of applicants for mining patents must be made in the following manner: In case of an incorporated company, a certified copy of its charter or certificate of incorporation must be filed. In case of an association of persons unincorporated, the statement of their duly authorized agent, made upon his own knowledge or upon information and belief, setting forth the residence of each person forming such association, must be submitted. This statement must be accompanied by a power of attorney from the parties forming such association, authorizing the person who makes the citizenship showing to act for them in the matter of their application of patent.

§ 3451.2 Citizenship of individuals.

(a) In case of an individual or an association of individuals who do not appear by their duly authorized agent, the statement of each applicant, showing whether he is a native or naturalized citizen, when and where born, and his residence, will be required.

(b) In case an applicant has declared his intention to become a citizen or has been naturalized, his statement must show the date, place, and the court before which he declared his intention, or from which his certificate of citizenship issued, and present residence.

§ 3451.3 Trustee to disclose nature of trust.

Any party applying for patent as trustee must disclose fully the nature of the trust and the name of the cestui que trust; and such trustee, as well as the beneficiaries, must furnish satisfactory proof of citizenship; and the names of beneficiaries, as well as that of the trustee, must be inserted in the final certificate of entry.

Subpart 3452—Possessory Rights

§ 3452.1 Right by occupancy

(a) The provisions of section 2332, Revised Statutes (30 U.S.C. 38), greatly lessen the burden of proof, more especially in the case of old claims located many years since, the records of which, in many cases, have been destroyed by fire, or lost in other ways during the lapse of time, but concerning the possessory right to which all controversy or litigation has lang been settled.

(b) When an applicant desires to make his proof of possessory right in accordance with this provision of law, he will not be required to produce evidence of location, copies of conveyances, or abstracts of title, as in other cases, but will be required to furnish a duly certified copy of the statute of limitation of mining claims for the State together with his statement giving a clear and succinct narration of the facts as to the origin of his title, and likewise as to the continuation of his possession of the mining ground covered by his application; the area thereof; the nature and extent of the mining that has been done thereon; whether there has been any opposition to his possession, or litigation with regard to his claim, and if so, when the same ceased; whether such cessation was caused by compromise or by judicial decree, and any additional facts within

the claimant's knowledge having a direct bearing upon his possession and bona fides which he may desire to submit in support of his claim.

§ 3452.2 Certificate of court required.

There should likewise be filed a certificate, under seal of the court having jurisdiction of mining cases within the judicial district embracing the claim, that no suit or action of any character whatever involving the right of possession to any portion of the claim applied for is pending, and that there has been no litigation before said court affecting the title to said claim or any part thereof for a period equal to the time fixed by the statute of limitations for mining claims in the State as aforesaid other than that which has been finally decided in favor of the claimant.

§ 3452.3 Corroborative proof required.

The claimant should support his narrative of facts relative to his possession, occupancy, and improvements by corroborative testimony of any disinterested person or persons of credibility who may be cognizant of the facts in the case and are capable of testifying understandingly in the premises.

Subpart 3453—Publication of Notice

§ 3453.1 Newspaper designation.

Upon the receipt of applications for mineral patent and accompanying papers, if no reason appears for rejecting the application, the manager will, at the expense of the claimant (who must furnish the agreement of the publisher to hold applicant for patent alone responsible for changes of publication), publish a notice of such application for the period of 60 days in a newspaper published nearest to the claim. If the notice is published in a daily paper, it shall be published in the Wednesday issue for nine consecutive weeks; if weekly, in nine consecutive issues; if semiweekly or triweekly, in the issue of the same day of each week for nine consecutive weeks. In all cases the first day of issues shall be excluded in estimating the period of 60 days.

§ 3453.2 Contents of published notice.

The notices published as required by the preceding section must embrace all the data given in the notice posted upon the claim. In addition to such data the published notice must further indicate the locus of the claim by giving the connecting line, as shown by the field notes and plat, between a corner of the claim and a United States mineral monument or a corner of the public survey, and thence the boundaries of the claim by courses and distances.

§ 3453.3 Manager to designate newspaper.

The manager shall have the notice of application for patent published in a paper of established character and general circulation, to be by him designated as being the newspaper published nearest the land.

§ 3453.4 Proof by applicant of publication and posting.

After the 60-day period of newspaper publication has expired, the claimant will furnish from the office of publication a sworn statement that the notice was published for the statutory period, giving the first and last day of such publication, and his own statement showing that the plat and notice aforesaid remained conspicuously posted upon the claim sought to be patented during said 60-day publication, giving the dates.

§ 3453.5 Charges for publication.

(a) The charge for the publication of notice of application for patent in a mining case in all districts shall not exceed the legal rates allowed by the laws of the several States for the publication of legal notices wherein the notice is published.

(b) It is expected that these notices shall not be so abbreviated as to curtail the description essential to a perfect notice, and on the other hand that they shall not be of unnecessary length. The printed matter must be set solid without paragraphing or any display in the heading and shall be in the usual body type used in legal notices. If other type is used, no allowance will be made for additional space on that account. The number of solid lines only used in advertising by actual count will be allowed. All abbreviations and copy must be strictly followed. The following is a sample of advertisement set up in accordance with Government requirements and contains all the essential data necessary for publication:

M. A. No. 04421, U. S. Land Office, Elko, Nevada, October 5, 1921. Notice is hereby given that the Jarbidge Buhl Mining Company by W. H. Hudson, attorney in fact, of Jarbidge, Nevada, has made application for patent to the Altitude, Altitude No. 1, Altitude No. 3, and Altitude Annex, lode mining claims, Survey No. 4470, in unsurveyed T. 46 N., R. 58 E., M. D. B. and M., in the Jarbidge mining district, Elko County, Nevada, described as follows: Beginning at corner No. 1, Altitude No. 3, whence the quarter corner of the south boundary of sec. 34 T. 46 N., R. 58 E., M. D. B. and M., bears south 41°54′ west 7285.63 feet, thence north 20° 14′ west 1500 feet to corner No. 2 of said lode; thence north 69°46′ east 569 feet to corner No. 3 of said lode; thence south 20°14′ east 417.5 feet to corner 2, Altitude No. 1; thence north 69°46′ east 1606.1 feet to corner No. 3, Altitude lode; thence south 20°14′ east 1500 feet, to corner No. 4 of said lode; thence south 69°46′ west 1606.1 feet, to corner No. 1, Altitude No. 1 lode; thence North 20°14′ west 417.5 feet to corner No. 4, Altitude No. 3; thence south 69°46′ west 569 feet to point of beginning. There are no adjoining or conflicting claims. The location notices are recorded in Book 17, pages 373 and 374, and

in Book 15, pages 52 and 53, mining locations, Elko County, Nevada, John E. Robbins, Manager.

(c) For the publication of citations in contests or hearings, involving the character of lands, the charges may not exceed the rates provided for similar notices by the law of the State.

§ 3453.6 Payment of purchase price and statement of charges and fees.

Upon the filing of the statement required by the preceding section, the manager will, if no adverse claim was filed in his office during the period of publication, and no other objection appears, permit the claimant to pay for the land to which he is entitled at the rate of $5 for each acre and $5 for each fractional part of an acre, except as otherwise provided by law, issuing the usual receipt therefor. The claimant will also make a statement of all charges and fees paid by him for publication and surveys, together with all fees and money paid the manager of the land office, and a patent shall be issued thereon if found regular.

Subpart 3455—Entry and Transfers

§ 3455.1 Allowance of entry; transfers subsequent to application not recognized.

No entry will be allowed until the manager has satisfied himself, by careful examination, that proper proofs have been filed upon the points indicated in the law and official regulations. Transfers made subsequent to the filing of the application for patent will not be considered, but entry will be allowed and patent issued in all cases in the name of the applicant for patent, the title conveyed by the patent, of course, in each instance inuring to the transferee of such applicant where a transfer has been made pending the application for patent.

Subpart 3456—Diligent Prosecution

§ 3456.1 Failure to prosecute application with diligence.

The failure of an applicant for patent to a mining claim to prosecute his application to completion, by filing the necessary proofs and making payment for the land, within a reasonable time after the expiration of the period of publication of notice of the application, or after the termination of adverse proceedings in the courts, constitutes a waiver by the applicant of all rights obtained by the earlier proceedings upon the application.

Subpart 3457—Application Processing Upon Contest or Protest

§ 3457.1 Resumption of patent proceedings after suspension due to adverse claim or protest.

The proceedings necessary to the completion of an application for patent to a mining claim, against which an adverse claim or protest has been filed, if taken by the applicant at the first opportunity afforded therefor under the law and departmental practice, will be as effective as if taken at the date when, but for the adverse claim or protest, the proceedings on the application could have been completed.

Subpart 3458—Patents for Mining Claims

§ 3458.1 Land descriptions in patents.

The land description in a patent for a lode mining claim, for a millsite, or for a placer claim not consisting of legal subdivisions, shall hereafter consist of the names and survey numbers of the claims being patented and those being excluded, or of the names of the excluded claims if they are unsurveyed, or of the legal subdivisions of excluded land covered by homestead or other nonmineral entry. The land description shall refer to the field notes of survey and the plat thereof for a more particular description and the patent shall expressly make them a part thereof. Where shown by the mineral entry the patent shall give the actual or approximate legal subdivision, section, township and range, the name of the county and of the mining district, if any, wherein the claims are situated. A copy of the plat and field notes of each mineral survey patented will be furnished to the patentee.

PART 3460—MILLSITES, PATENTS

Subpart 3460—Millsites, Patents; General

Sec.

3460.1 Application for patent.
3460.2 Mill sites applied for in conjunction with a lode claim.
3460.3 Mill sites for quartz mills or reduction works.
3460.4 Proof of nonmineral character.

AUTHORITY: The provisions of this Part 3460 issued under R.S. 2478; 43 U.S.C. 1201.

Subpart 3460—Millsites, Patents; General

§ 3460.1 Application for patent.

(a) Land entered as a mill site must be shown to be nonmineral. Mill sites are simply auxiliary to the working of mineral claims. Section 2337 of the Revised Statutes (30 U.S.C. 42) provides for the patenting of mill sites.

(b) To avail themselves of this provision of law, parties holding the possessory right to a vein or lode claim, and to a piece of nonmineral land not contiguous thereto for mining or milling purposes, not exceeding the quantity allowed for such purpose by section 2337, or prior laws, under which the land was appropriated, the proprietors of such vein or lode may file in the proper land office their application for a patent, which application, together with the plat and field notes, may include, embrace, and describe, in addition to the vein or lode claim, such noncontiguous mill site, and after due proceedings at to notice, etc., a patent will be issued conveying the same as one claim. The owner of a patented lode may, by an independent application, secure a mill site, if good faith is manifest in its use or occupation in connection with the lode and no adverse claim exists.

(c) The act of March 18, 1960 (74 Stat. 7; 43 U.S.C. 42(b)), amends R.S. 2337 to allow the holders of possessory right in a placer claim to hold nonmineral land for mining, milling, processing beneficiation, or other operations in connection with the placer claim. Applications for patent for such mill sites are subject to the same requirements as to survey and notice as one applicable to placer mining claims. No one mill site may exceed five acres and payment will be $2.50 per acre or fraction thereof.

§ 3460.2 Mill sites applied for in conjunction with a lode claim.

Where the original survey includes a lode claim and also a mill site the lode claim should be described in the plat and field notes as "Sur. No. 37, A," and the mill site as "Sur. No. 37, B," or whatever may be its appropriate numerical designation; the course and distance from a corner of the mill site to a corner of the lode claim to be invariably given in such plat and field notes, and a copy of the plat and notice of application for patent must be conspicuously posted upon the mill site as well as upon the vein or lode claim for the statutory period of 60 days. In making the entry no separate receipt or certificate need be issued for the mill site, but the whole area of both lode and mill site will be embraced in one entry, the price being $5 for each acre and fractional part of an acre embraced by such lode and mill site claim.

§ 3460.3 Mill sites for quartz mills or reduction works.

In case the owner of a quartz mill or reduction works is not the owner or claimant of a vein or lode claim the law permits him to make application therefor in the same manner prescribed for mining claims, and after due notice and proceedings, in the absence of a valid adverse filing, to enter and receive a patent for his mill site at the price named in the preceding section.

§ 3460.4 Proof of nonmineral character.

In every case there must be satisfactory proof that the land claimed as a mill site is not mineral in character, which proof may, where the matter is unquestioned, consist of the statement of two or more persons capable, from acquaintance with the land to testify understandingly.

PART 3470—PLACER MINING CLAIM PATENT APPLICATIONS

Subpart 3470—Placer Mining Claim Patent Applications; General

Sec.
3470.1 Application for patent.
3470.2 Proof of improvements for patent.
3470.3 Data to be filed in support of application.
3470.4 Applications for placers containing known lodes.

AUTHORITY: The provisions of this Part 3470 issued under R.S. 2478; 43 U.S.C. 1201.

Subpart 3470—Placer Mining Claim Patent Applications; General

§ 3470.1 Application for patent.

(a) The proceedings to obtain patents for placer claims, including all forms of mineral deposits excepting veins of quartz or other rock in place, are similar to the proceedings prescribed for obtaining patents for vein or lode claims; but where a placer claim shall be upon surveyed lands, and conforms to legal subdivisions, no further survey or plat will be required. Where placer claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands.

(b) The price of placer claims is fixed at $2.50 per acre or fractional part of an acre.

§ 3470.2 Proof of improvements for patent.

The proof of improvements must show their value to be not less than $500 and that they were made by the applicant for patent or his grantors. This proof should consist of the statement of two or more disinterested witnesses.

§ 3470.3 Data to be filed in support of application.

(a) In placer applications, in addition to the recitals necessary in and to both vein or lode and placer applications, the placer application should contain, in detail, such data as will support the claim that the land applied for is placer ground containing valuable mineral deposits not in vein or lode formation and that title is sought not to control water courses or to obtain valuable timber but in good faith because of the mineral therein. This statement, of course, must depend upon the character of the deposit and the natural features of the ground, but the following details should be covered as fully as possible: If the claim be for a deposit of placer gold, there must be stated the yield per pan, or cubic yard, as shown by prospecting and development work, distance to bedrock, formation and extent of the deposit, and all other facts upon which he bases his allegation that the claim is valuable for its deposits of placer gold. If it be a building stone or other deposit than gold claimed under the placer laws, he must describe fully the kind, nature, and extent of the deposit, stating the reasons why same is by him regarded as a valuable mineral claim. He will also be required to describe fully the natural features of the claim, streams, if any must be fully described as to their course, amount of water carried, fall within the claim; and he must state kind and amount of timber and other vegetation thereon and adaptability to mining or other uses.

(b) If the claim be all placer ground, that fact must be stated in the application and corroborated by accompanying proofs; if of mixed placers and lodes, it should be so set out, with a description of all known lodes situated within the boundaries of the claim. A specific declaration, such as is required by section 2333, Revised Statutes (30 U.S.C. 37) must be furnished as to each lode intended to be claimed. All other known lodes are, by the silence of the applicant, excluded by law from all claim by him, of whatsoever nature, possessory or otherwise.

(c) While these data are required as a part of the mineral surveyor's report in case of placers taken by special survey, it is proper that the application for patent incorporate these facts.

(d) Inasmuch as in case of claims taken by legal subdivisions, no report by a mineral surveyor is required, the claimant, in his application in addition to the data above required, should describe in detail the shafts, cuts, tunnels, or other workings claimed as improvements, giving their dimensions, value, and the course and distance thereof to the nearest corner of the public surveys.

(e) The statement as to the description and value of the improvements must be corroborated by the statements of two disinterested witnesses. The proof showing must be made in duplicate. See 51 L.D. 265 and 52 L.D. 190.

(f) Applications awaiting entry, whether published or not, must be made to conform to this part, with respect to proof as to the character of the land. Entries already made will be suspended for such additional proofs as may be deemed necessary in each case.

§ 3470.4 Applications for placers containing known lodes.

Applicants for patent to a placer claim, who are also in possession of a known vein or lode included therein, must state in their application that the placer includes such vein or lode. The published and posted notices must also include such statement. If veins or lodes lying within a placer locations are owned by other parties, the fact should be distinctly stated in the application for patent and in all the notices. But in all cases whether the lode is claimed or excluded, it must be surveyed and marked upon the plat, the field notes and plat giving the area of the lode claim or claims and the area of the placer separately. An application which omits to claim such known vein or lode must be construed as a conclusive declaration that the applicant has no right of possession to the vein or lode. Where there is no known lode or vein, the fact must appear by the statement of two or more witnessess.

PART 3480—ADVERSE CLAIMS, PROTESTS AND CONFLICTS

Subpart 3481—Adverse Claims

Sec.
3481.1 Filing of claim.
3481.2 Statement of claim.
3481.3 Action by manager.
3481.4 Patent proceedings stayed when adverse claim is filed; exception.
3481.5 Termination of adverse suit.
3481.6 Certificate required when no suit commenced.

Subpart 3482—Protests, Contests, Conflicts, and Segregations

3482.1 Protest against mineral applications.
3482.2 Procedure in contest cases.
3482.3 Presumption as to land returned as mineral.
3482.4 Procedure to dispute record character of land.
3482.5 Testimony at hearings to determine character of lands.

Subpart 3483—Segregation

3483.1 Segregation of mineral from non-mineral land.
3483.2 Effect of decision that land is mineral.
3483.3 Non-mineral entry of residue of subdivisions invaded by mining claims.

AUTHORITY: The provisions of this Part 3480 issued under R.S. 2478; 43 U.S.C. 1201.

Subpart 3481—Adverse Claims

§ 3481.1 Filing of claim.

(a) An adverse claim must be filed with the manager of the land office where the application for patent is filed or with the manager of the district in which the land is situated at the time of filing the adverse claim. The claim may be filed by the adverse claimant, or by his duly authorized agent or attorney in fact cognizant of the facts stated.

(b) Where an agent or attorney in fact files the adverse claim he must furnish proof that he is such agent or attorney.

(c) The agent or attorney in fact must sign the statement of the adverse claim within the land district where the claim is situated, stating that it was so signed.

(d) A fee of $10 is payable by an adverse claimant at the time of filing his adverse claim. This charge is not refundable.

§ 3481.2 Statement of claim.

(a) The adverse claim must fully set forth the nature and extent of the interference or conflict; whether the adverse party claims as a purchaser for valuable consideration or as a locator. If the former, a certified copy of the original location, the original conveyance, a duly certified copy thereof, or an abstract of title from the office of the proper recorder should be furnished, or if the transaction was a merely verbal one he will narrate the circumstances attending the purchase, the date thereof, and the amount paid, which facts should be supported by the statement of one or more witnesses, if any were present at the time, and if he claims as a locator he must file a duly certified copy of the location from the office of the proper recorder.

(b) In order that the "boundaries" and "extent" of the claim may be shown, it will be incumbent upon the adverse claimant to file a plat showing his entire claim, its relative situation or position with the one against which he claims, and the extent of the conflict: *Provided, however,* That if the application for patent describes the claim by legal subdivisions, the adverse claimant, if also claiming by legal subdivisions, may describe his adverse claim in the same manner without further survey or plat. If the claim is not described by legal subdivisions it will generally be more satisfactory if the plat thereof is made from an actual survey by a mineral surveyor and its correctness officially certified thereon by him.

§ 3481.3 Action by manager.

(a) Upon the adverse claim being filed within the 60-day period of publication, the manager will immediately give notice in writing to the parties that such adverse claim has been filed, informing them that the party who filed the adverse claim will be required within 30 days from the date of such filing to commence proceedings in a court of competent jurisdiction to determine the question of right of possession, and to prosecute the same with reasonable diligence to final judgment, and that should such adverse claimant fail to do so, his adverse claim will be considered waived and the application for patent be allowed to proceed upon its merits.

(b) The Act of September 21, 1961 (P.L. 87-260; 75 Stat. 541) amends the Act of June 7, 1910 (36 Stat. 459; 48 U.S.C. 386), and provides that adverse suits against mineral entries in Alaska shall be instituted within the 60-day time limit set forth in R.S. 2325 and 2326, (30 U.S.C. 29, 30). The act further provides that where a mineral patent application was filed prior to the effective date of the act, the time in which to file adverse suits is governed by the Act of June 7, 1910. Where a mineral patent application was filed prior to September 21, 1961, the entry will not be allowed until after the expiration of eight months following the publication period.

§ 3481.4 Patent proceedings stayed when adverse claim is filed; exception.

When an adverse claim is filed as aforesaid, the manager will endorse upon the same the precise date of filing and preserve a record of the date of notifications issued thereon; and thereafter all proceedings on the application for patent will be stayed with the exception of the completion of the publication and posting of notices and plat and the filing of the necessary proof thereof, until the controversy shall have been finally adjudicated in court or the adverse claim waived or withdrawn.

§ 3481.5 Termination of adverse suit.

(a) Where an adverse claim has been filed and suit thereon commenced within the statutory period and final judgment

rendered determining the right of possession. it will not be sufficient to file with the manager a certificate of the clerk of the court setting forth the facts as to such judgment, but the successful party must, before he is allowed to make entry, file a certified copy of the judgment roll, together with the other evidence required by section 2326, Revised Statutes (30 U.S.C. 30), and a certificate of the clerk of the court under the seal of the court showing, in accord with the record facts of the case, that the judgment mentioned and described in the judgment roll aforesaid is a final judgment; that the time for appeal therefrom has, under the law, expired, and that no such appeal has been filed, or that the defeated party has waived his right to appeal. Other evidence showing such waiver or an abandonment of the litigation may be filed.

(b) Where such suit has been dismissed, a certificate of the clerk of the court to that effect or a certified copy of the order of dismissal will be sufficient.

(c) After an adverse claim has been filed and suit commenced, a relinquishment or other evidence of abandonment of the adverse claim will not be accepted, but the case must be terminated and proof thereof furnished as required by the last two paragraphs.

§ 3481.6 Certificate required when no suit commenced.

Where an adverse claim has been filed but no suit commenced against the applicant for patent within the statutory period, a certificate to that effect by the clerk of the State court having jurisdiction in the case, and also by the clerk of the district court of the United States for the district in which the claim is situated, will be required.

Subpart 3482—Protests, Contests, Conflicts, and Segregations

§ 3482.1 Protest against mineral applications.

(a) At any time prior to the issuance of patent, protest may be filed against the patenting of the claim as applied for, upon any ground tending to show that the applicant has failed to comply with the law in any matter essential to a valid entry under the patent proceedings. Such protest cannot, however, be made the means of preserving a surface conflict lost by failure to adverse or lost by the judgment of the court in an adverse suit. One holding a present joint interest in a mineral location included in an application for patent who is excluded from the application, so that his interest would not be protected by the issue of patent thereon, may protest against the issuance of a patent as applied for, setting forth in such protest the nature and extent of his interest in such location, and such a protestant will be deemed a party in interest entitled to appeal. This results from the holding that a co-owner excluded from an application for patent does not have an "adverse" claim within the meaning of sections 2325 and 2326 of the Revised Statutes (30 U.S.C. 29, 30). (See Turner v. Sawyer, 150 U.S. 578–586, 37 L. ed. 1189–1191.)

(b) Such protest filed by any party, other than a Federal agency, must be accompanied by a $10 nonrefundable service charge.

§ 3482.2 Procedure in contest cases.

Parts 1840 and 1850 of this chapter, in cases before the United States, the Bureau of Land Management, and the Department of the Interior will, so far as applicable, govern in all cases and proceedings arising in contests and hearings to determine the character of lands.

§ 3482.3 Presumption as to land returned as mineral.

Public land returned upon the survey records as mineral shall be withheld from entry as agricultural land until the presumption arising from such a return shall be overcome.

§ 3482.4 Procedure to dispute record character of land.

(a) When lands returned as mineral are sought to be entered as agricultural under laws which require the submission of final proof after due notice by publication and posting, the filing of the proper nonmineral statement in the absence of allegations that the land is mineral will be deemed sufficient as a preliminary requirement. A satisfactory showing as to character of land must be made when final proof is submitted.

(b) In case of application to enter, locate, or select such lands as agricultural, under laws in which the submission of final proof after due publication and posting is not required, notice thereof must first be given by publication for 60 days and posting in the local office during the same period, and affirmative proof as to the character of the land submitted. In the absence of allegations that the land is mineral, and upon compliance with this requirement, the entry, location, or selection will be allowed, if otherwise regular.

(c) Where as against the claimed right to enter such lands as agricultural it is alleged that the same are mineral, or are applied for as mineral lands, the proceedings in this class of cases will be in the nature of a contest, and the practice will be governed by the rules in force in contest cases.

§ 3482.5 Testimony at hearings to determine character of lands.

(a) At hearings to determine the character of lands the claimants and witnesses will be thoroughly examined with regard to the character of the land; whether the same has been thoroughly prospected; whether or not there exists within the tract or tracts claimed any lode or vein of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, or other valuable deposit which has ever been claimed, located, recorded, or worked; whether such work is entirely abandoned, or whether occasionally resumed; if such lode does exist, by whom

claimed, under what designation, and in which subdivision of the land it lies; whether any placer mine or mines exist upon the land; if so, what is the character thereof, whether of the shallow-surface description, or of the deep cement, blue lead, or gravel deposits; to what extent mining is carried on when water can be obtained, and what the facilities are for obtaining water for mining purposes; upon what particular 10-acre subdivisions mining has been done, and at what time the land was abandoned for mining purposes, if abandoned at all. In every case, where practicable, an adequate quantity or number of representative samples of the alleged mineral-bearing matter or material should be offered in evidence, with proper identification, to be considered in connection with the record, with which they will be transmitted upon each appeal that may be taken. Testimony may be submitted as to the geological formation and development of mineral on adjoining or adjacent lands and their relevancy.

(b) The testimony should also show the agricultural capacities of the land, what kind of crops are raised thereon, the value thereof; the number of acres actually cultivated for crops of cereals or vegetables, and within which particular 10-acre subdivision such crops are raised; also which of these subdivisions embrace the improvements, giving in detail the extent and value of the improvements, such as house, barn, vineyard, orchard, fencing, etc., and mining improvements.

(c) The testimony should be as full and complete as possible; and in addition to the leading points indicated above, where an attempt is made to prove the mineral character of lands which have been entered under the agricultural laws, it should show at what date, if at all, valuable deposits of minerals were first known to exist on the lands.

Subpart 3483—Segregation

§ 3483.1 Segregation of mineral from non-mineral land.

Where a survey is necessary to set apart mineral from non-mineral land, the appropriate authorized officer will have special instructions prepared outlining the procedure to be followed in the required survey. The survey will be executed at the expense of the United States. Where, in stock-raising homestead entries, it has been satisfactorily established that there are existent prior unpatented mining claims, the segregation of the latter is not strictly a segregation of mineral from non-mineral land, but rather the procedure adopted to define the boundaries of and provide a legal description for that part of the homestead entry which is not within the segregated mining claims.

§ 3483.2 Effect of decision that land is mineral.

The fact that a certain tract of land is decided upon testimony to be mineral in character is by no means equivalent to an award of the land to a miner. In order to secure a patent for such land, he must proceed as in other cases, in accordance with this part.

§ 3483.3 Non-mineral entry of residue of subdivisions invaded by mining claims.

(a) The manager will accept and approve any application (if otherwise regular), to make a non-mineral entry of the residue of any original lot or legal subdivision which is invaded by mining claims if the tract has already been lotted to exclude such claims. If not so lotted, and if the original lot or legal subdivision is invaded by patented mining claims, or by mining claims covered by pending applications for patent which the non-mineral applicant does not desire to contest, or by approved mining claims of established mineral character, the manager will accept and approve the application (if otherwise regular), exclusive of the conflict with the mining claims.

(b) The manager will allow no non-mineral application for any portion of an original lot or 40-acre legal subdivision, where the tract has not been lotted to show the reduced area by reason of approved surveys of mining claims for which applications for patent have not been filed, until the non-mineral applicant submits a satisfactory showing that such surveyed claims are in fact mineral in character. Applications to have lands which are asserted to be mineral, or mining locations, segregated by survey with a view to the non-mineral appropriation of the remainder, will be made to the manager of the land office. Such applications must be supported by a written statement of the party in interest, duly corroborated by two or more disinterested persons, or by such other or further evidence as may be required, that the land sought to be segregated as mineral is in fact mineral in character.

Group 3500—Multiple Use

PART 3510—PUBLIC LAW 167; ACT OF JULY 23, 1955

Subpart 3510—Public Law 167; Act of July 23, 1955; General

Sec.
3510.0–3 Authority.

Subpart 3511—Common Varieties

3511.1 Provisions of act.

Subpart 3512—Proceedings Under the Act

3512.1 Restriction on use of unpatented mining claims.
3512.2 Request for publication of notice to mining claimant.
3512.3 Evidence necessary to support a request for publication.
3512.4 Publication of notice.
3512.5 Contents of published notice.
3512.6 Service of notice.
3512.7 Service of copies; failure to comply.
3512.8 Proof of publication.
3512.9 Failure of claimant to file verified statement.

Subpart 3513—Hearings

3513.1 Hearing; time and place.
3513.2 Stipulation between parties.
3513.3 Hearing; procedures.
3513.4 Effect of decision affirming a mining claimant's rights.

Subpart 3514—Rights of Mining Claimants

3514.1 Recording by mining claimant of request for copy of notice.
3514.2 Waiver of rights by mining claimants.
3514.3 Protection of existing rights; exclusion of reservation in patents.

AUTHORITY: The provisions of this Part 3510 issued under sec 1, 61 Stat. 681, as amended 30 U.S.C. 601.

Subpart 3510—Public Law 167; Act of July 23, 1955; General

§ 3510.0–3 Authority.

The act of July 23, 1955 (69 Stat. 367, 30 U.S.C. sec. 601), was enacted "to amend the act of July 31, 1947 (61 Stat. 681) and the mining laws to provide for multiple use of the surface of the same tracts of the public lands, and for other purposes." The regulations in this part are intended to implement only sections 3 to 7, inclusive, of said act hereinafter more fully identified. The word "act" when used in this subpart refers to the act of July 23, 1955. Sections 1 and 2 thereof relate specifically to the Materials Act of July 31, 1947, and will be implemented by Part 3610.

Subpart 3511—Common Varieties

§ 3511.1 Provisions of act.

(a) The act in section 3 provides: A deposit of common varieties of sand, stone, gravel, pumice, pumicite, or cinders shall not be deemed a valuable mineral deposit within the meaning of the mining laws of the United States so as to give effective validity to any mining claim hereafter located under such mining laws: *Provided, however,* That nothing herein shall affect the validity of any mining location based upon discovery of some other mineral occurring in or in association with such a deposit. "Common varieties" as used in this act does not include deposits of such materials which are valuable because the deposit has some property giving it distinct and special value and does not include so-called "block pumice" which occurs in nature in pieces having one dimension of two inches or more.

(b) "Common varieties" includes deposits which, although they may have value for use in trade, manufacture, the sciences, or in the mechanical or ornamental arts, do not possess a distinct, special economic value for such use over and above the normal uses of the general run of such deposits. Mineral materials which occur commonly shall not be deemed to be "common varieties" if a particular deposit has distinct and special properties making it commercially valuable for use in a manufacturing, industrial, or processing operation. In the determination of commercial value, such factors may be considered as quality and quantity of the deposit, geographical location, proximity to market or point of utilization, accessibility to transportation, requirements for reasonable reserves consistent with usual industry practices to serve existing or proposed manufacturing, industrial, or processing facilities, and feasible methods for mining and removal of the material. Limestone suitable for use in the production of cement, metallurgical or chemical grade limestone, gypsum, and the like are not "common varieties." This subsection does not relieve a claimant from any requirements of the mining laws.

Subpart 3512—Proceedings Under the Act

§ 3512.1 Restriction on use of unpatented mining claims.

(a) The act in section 4 provides:

Any mining claim hereafter located under the mining laws of the United States shall not to be used, prior to issuance of patent therefor, for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto.

Rights under any mining claim hereafter located under the mining laws of the United States shall be subject, prior to issuance of patent therefor, to the right of the United States to manage and dispose of the vegetative surface resources thereof and to manage other surface resources thereof (except mineral deposits subject to location under the mining laws of the United States). Any such mining claim shall also be subject, prior to issuance of patent therefor, to the right of the United States, its permittees, and licensees, to use so much of the surface thereof as may be necessary for such purposes or for access to adjacent land: *Provided, however,* That any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto: *Provided, further,* That if at any time the locator requires more timber for his mining operations than is available to

him from the claim after disposition of timber therefrom by the United States, subsequent to the location of the claim, he shall be entitled, free of charge, to be supplied with timber for such requirements from the nearest timber administered by the disposing agency which is ready for harvesting under the rules and regulations of that agency and which is substantially equivalent in kind and quantity to the timber estimated by the disposing agency to have been disposed of from the claim: *Provided, further,* That nothing in this act shall be construed as affecting or intended to affect or in any way interfere with or modify the laws of the States which lie wholly or in part westward of the ninety-eighth meridian relating to the ownership, control, appropriation, use, and distribution of ground or surface waters within any unpatented mining claim.

Except to the extent required for the mining claimant's prospecting, mining or processing operations and uses reasonably incident thereto, or for the construction of buildings or structures in connection therewith, or to provide clearance for such operations or uses, or to the extent authorized by the United States, no claimant of any mining claim hereafter located under the mining laws of the United States shall, prior to issuance of patent therefor, sever, remove, or use any vegetative or other surface resources thereof which are subject to management or disposition by the United States under the preceding subsection (b). Any severence or removal of timber which is permitted under the exceptions of the preceding sentence, other than severance or removal to provide clearance, shall be in accordance with sound principles of forest management.

(b) The locator of an unpatented mining claim subject to the act is limited in his use of the claim to those uses specified in the act, namely prospecting, mining, or processing operations and uses reasonably incident thereto. He is forbidden to use it for any other purpose such, for example, as for filling stations, curio shops, cafes, tourist, or fishing and hunting camps. Except as such interference may result from uses permitted under the act, the locator of an unpatented mining claim subject to the act may not interfere with the right of the United States to manage the vegetative and other surface resources of the land, or use it so as to block access to or egress from adjacent public land, or use Federal timber for purposes other than those permitted under the act, or block access to water needed in grazing use of the national forests or other public lands, or block access to recreational areas, or prevent agents of the Federal Government from crossing the locator's claim in order to reach adjacent land for purposes of managing wild-game habitat or improving fishing streams so as to thwart the public harvest and proper management of fish and game resources on the public lands generally, both on located and on adjacent lands.

(c) Mining claims located prior to the date of the act will be subject to the act where determination has been made pursuant to section 5 of the act, that the locator's surface rights are limited as provided in section 4 of the act, or where the owners have waived and relinquished all rights under section 6 of the act, which are contrary to or in conflict with the limitations and restrictions specified as to hereafter located unpatented mining claims in section 4 of the act. See § 3514.3 as to effect on existing rights.

(d) On mining claims subject to the provisions of the act, timber may be used by the claimants only for the purposes permitted under the act, and, except where timber is removed to provide clearance for operations or uses permitted under the act, such timber must be cut in accordance with sound principles of forest management. When timber on a mining claim is disposed of by the Government subsequent to the location of the claim, free use of timber by the mining claimant of like kind and quantity from the nearest timber administered by the disposing agency is provided for, but only when and to the extent that is required for their mining operations and only in kind and quantity substantially equivalent to the timber removed from the claim by the Government. Any such timber may be cut and removed only under the rules and regulations of the administering agency. Regulations governing applications and issuance of permits for the use of such timber on public lands administered by the Bureau of Land Management are contained in Part 259 of this chapter.

§ 3512.2 Request for publication of notice to mining claimant.

(a) The act in the first paragraph of section 5(a) provides as follows:

The head of a Federal department or agency which has the responsibility for administering surface resources of any lands belonging to the United States may file as to such lands in the office of the Secretary of the Interior, or in such office as the Secretary of the Interior may designate, a request for publication of notice to mining claimants, for determination of surface rights, which request shall contain a description of the lands covered thereby, showing the section or sections of the public land surveys which embrace the lands covered by such request, or if such lands are unsurveyed, either the section or sections which would probably embrace such lands when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument.

The "request for publication of notice to mining claimants" authorized to be filed by the above-quoted portion of the act can be filed by the Federal department or agency which has the responsibility for administering surface resources of the lands to which the requested notice would relate. It must describe the land covered by the request by section, township, range, and meridian or, if the land is unsurveyed, either the section or sections which would probably embrace such lands when the public land surveys are extended to such lands, or by a metes and bounds description of such area with a tie to a United States mineral monument.

(b) A request for publication of notice under this subsection shall be filed with the land office of the Bureau of Land Management for the land district in which the lands are situated. No request for publication may include lands in more than one land district.

§ 3512.3 Evidence necessary to support a request for publication.

(a) The second and third paragraphs of section 5(a) of the act provide in detail for the filing by the head of a Federal department or agency of certain evidence in support of the request for publication of the notice referred to in § 3512.2 as follows:

The filing of such request for publication shall be accompanied by an affidavit or affidavits of a person or persons over twenty-one years of age setting forth that the affiant or affiants have examined the lands involved in a reasonable effort to ascertain whether any person or persons were in actual possession of or engaged in the working of such lands or any part thereof, and, if no person or persons were found to be in actual possession of or engaged in the working of said lands or any part thereof, on the date of such examination, setting forth such fact, or, if any person or persons were so found to be in actual possession or engaged in such working on the date of such examination, setting forth the name and address of each such person, unless affiant shall have been unable through reasonable inquiry to obtain information as to the name and address of any such person, in which event the affidavit shall set forth fully the nature and results of such inquiry.

The filing of such request for publication shall also be accompanied by the certificate of a title or abstract company, or of a title abstractor, or of an attorney, based upon such company's abstractor's or attorney's examination of those instruments which are shown by the tract indexes in the county office of record as affecting the lands described in said request, setting forth the name of any person disclosed by said instruments to have an interest in said lands under any unpatented mining claim heretofore located, together with the address of such person if such address is disclosed by such instruments of record. "Tract indexes" as used herein shall mean those indexes, if any, as to surveyed lands identifying instruments as affecting a particular legal subdivision of the public land surveys, and as to unsurveyed lands identifying instruments as affecting a particular probable legal subdivision according to a projected extension of the public land surveys.

(b) This part of the act requires the filing of an affidavit which may be made by any person or persons over twenty-one years of age who have examined the lands. It must show whether any person or persons were "in actual possession of or engaged in the working of such lands (the lands described in the request for publication of notice) or any part thereof" and, if they were, the name and address of each such person must be given if it can be learned by reasonable inquiry and if it cannot be so learned, the affidavit must show in detail what inquiry or inquires were made to obtain each such name and address. No definition of the terms "in actual possession" or "engaged in the working of said lands" will be attempted here, but the affidavits should recite what evidences of occupancy or workings were found. The request for publication must also be accompanied by a certificate executed as provided in the third paragraph of section 5(a) and containing the information required by that paragraph to be furnished. If there are no tract indexes, as defined in the act, in the county office of record affecting the lands described in the request for publication, a certificate executed as provided in the said third paragraph of section 5(a) to that effect must be furnished.

§ 3512.4 Publication of notice.

If the request for publication and the accompanying papers conform to the requirements of the act, the Manager or the Director, as may be appropriate, at the expense of the requesting department or agency, shall cause notice to mining claimants to be published in a newspaper having general circulation in the county in which the lands involved are situated. If the notice is published in a daily newspaper it shall be published in the Wednesday issue for nine consecutive weeks, if in a weekly paper, in nine consecutive issues, or if in a semi-weekly or tri-weekly paper, in the issue of the same day of each week for nine consecutive weeks.

§ 3512.5 Contents of published notice.

Section 5(a) of the act specifies in detail what the published notice shall contain, as follows:

Such notice shall describe the lands covered by such request, as provided heretofore, and shall notify whomever it may concern that if any person claiming or asserting under, or by virtue of, any unpatented mining claim heretofore located, rights as to such lands or any part thereof, shall fail to file in the office where such request for publication was filed (which office shall be specified in such notice) and within one hundred and fifty days from the date of the first publication of such notice (which date shall be specified in such notice), a verified statement which shall set forth, as to such unpatented mining claim—

(1) The date of location;

(2) The book and page of recordation of the notice or certificate of location;

(3) The section or sections of the public land surveys which embrace such mining claims; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument;

(4) Whether such claimant is a locator or purchaser under such location; and

(5) The name and address of such claimant and names and addresses so far as known to the claimant of any other person or persons claiming any interest or interests in or under such unpatented mining claim; such failure shall be conclusively deemed (i) to constitute a waiver and relinquishment by such mining claimant of any right, title or interest under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of this act as to hereafter located unpatented mining claims, and (ii) to constitute a consent by such mining claimant that such mining claim, prior to issuance of patent therefor, shall be subject to the limitations and restrictions specified in section 4 of this act as to hereafter located unpatented mining claims, and (iii) to preclude thereafter, prior to issuance of patent, any assertion by such mining claimant of any right or title to or interest in or under such mining claim contrary to or in conflict with the limitations or restrictions specified in sec-

tion 4 of this act as to hereafter located unpatented mining claims.

§ 3512.6 Service of notice.

The last paragraph of section 5(a) of the act provides with respect to service of the notice by personal delivery or by registered mail, as follows:

Within fifteen days after the date of first publication of such notice, the department or agency requesting such publication (1) shall cause a copy of such notice to be personally delivered to or to be mailed by registered mail addressed to each person in possession or engaged in the working of the land whose name and address is shown by an affidavit filed as aforesaid, and to each person who may have filed, as to any lands described in said notice, a request for notices, as provided in subsection (d) of this section 5, and shall cause a copy of such notice to be mailed by registered mail to each person whose name and address is set forth in the title or abstract company's or title abstractor's or attorney's certificate filed as aforesaid, as having an interest in the lands described in said notice under any unpatented mining claim heretofore located, such notice to be directed to such person's address as set forth in such certificate; and (2) shall file in the office where said request for publication was filed an affidavit showing that copies have been so delivered or mailed.

§ 3512.7 Service of copies; failure to comply.

If the department or agency requesting publication under these regulations shall fail to comply with the requirements of section 5(a) of the act as to the personal delivery or mailing of a copy of the published notice to any person, the publication of such notice shall be deemed wholly ineffectual as to that person or as to the rights asserted by that person and the failure of that person to file a verified statement, as provided in such notice shall in no manner affect, diminish, prejudice or bar any rights of that person.

§ 3512.8 Proof of publication.

After the period of newspaper publication has expired, the department or agency requesting the publication shall obtain from the office of the newspaper or publication a sworn statement that the notice was published at the time and in accordance with the requirements under the regulations of this part, and shall file such sworn statement in the office where the Request for Publication was filed.

§ 3512.9 Failure of claimant to file verified statement.

If any claimant under any unpatented mining claim located prior to July 23, 1955, which embraces any of the lands described in any notice published in accordance with the regulations in this part shall fail to file a verified statement, as specified in such published notice (See § 3512.4), within one hundred and fifty days from the date of the first publication of such notice, such failure shall be conclusively deemed except as otherwise provided in § 3512.7.

(a) To constitute a waiver and relinquishment by such mining claimant of any right, title or interest under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of the act as to unpatented mining claims located after its enactment.

(b) To constitute a consent by such mining claimant that such mining claim, prior to issuance of patent therefor, be subject to the limitations and restrictions specified in section 4 of the act as to unpatented mining claims located after its enactment.

(c) To preclude thereafter prior to the issuance of patent any assertion by such mining claimant of any right or title to or interest in or under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of the act as to unpatented mining claims located after its enactment.

Subpart 3513—Hearings

§ 3513.1 Hearing; time and place.

If any verified statement shall be filed by a mining claimant then the Examiner or the Director, as may be appropriate, shall fix a time and place for a hearing to determine the validity and effectiveness of any right or title to or interest in or under such mining claim which the mining claimant may assert contrary to or in conflict with the limitations or restrictions specified in section 4 of the act as to unpatented mining claims located after its enactment. The Examiner shall notify the department or agency and all mining claimants entitled to notice as the result of the filing of such verified statement of the time and place of such hearing at least 30 days in advance thereof. The notice of hearing shall contain a statement specifying the issues upon which evidence will be submitted at the hearing. Such hearing shall be held in the county where the lands in question, or parts thereof, are located unless the mining claimant agrees otherwise.

§ 3513.2 Stipulation between parties.

Where verified statements are filed asserting rights to an aggregate of more than twenty mining claims, any single hearing shall be limited to a maximum of twenty mining claims unless the parties affected shall otherwise stipulate and as many separate hearings shall be set as shall be necessary to comply with section 5(c) of the act. If at any time prior to a hearing the department or agency requesting publication of notice and any person filing a verified statement pursuant to such notice shall so stipulate, then to the extent so stipulated, but only to such extent, no hearing shall be held with respect to rights asserted under that verified statement, and to the extent defined by the stipulation the rights asserted under that verified statement shall be deemed to be unaffected by the notice published pursuant to that request.

§ 3513.3 Hearing; procedures.

The procedures with respect to notice of such a hearing and the conduct thereof, and in respect to appeals, shall fol-

low the appeals and contests of the Department of the Interior and the Bureau of Land Management (Part 1850 of this title) relating to contests or protests affecting public lands of the United States so far as they are applicable.

§ 3513.4 Effect of decision affirming a mining claimant's rights.

(a) If the final decision rendered in any hearing held pursuant to section 5 of the act shall affirm the validity and effectiveness of any mining claimant's right or interest under a mining claim asserted in accordance with the provisions of that section, then no subsequent proceedings under section 5 of the act shall have any force or effect upon the so-affirmed right or interest of such mining claimant under such mining claim.

(b) If it is finally determined as the result of such a hearing that the claimant has no right or title to or interest in or under his mining claim which he may assert contrary to or in conflict with the limitations and restrictions specified in section 4 of the act, then those limitations and restrictions shall apply with respect to such mining claim.

Subpart 3514—Rights of Mining Claimants

§ 3514.1 Recording by mining claimant of request for copy of notice.

Section 5(d) of the act provides as follows:

Any person claiming any right under or by virtue of any unpatented mining claim heretofore located and desiring to receive a copy of any notice to mining claimants which may be published as above provided in subsection (a) of this section 5, and which may affect lands embraced in such mining claim, may cause to be filed for record in the county office of record where the notice of certificate of location of such mining claim shall have been recorded, a duly acknowledged request for a copy of any such notice. Such request for copies shall set forth the name and address of the person requesting copies, and shall also set forth, as to each heretofore located unpatented mining claim under which such person asserts rights—

(1) The date of location;

(2) The book and page of the recordation of the notice or certificate of location; and

(3) The section or sections of the public land surveys which embrace such mining claim; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument. Other than in respect to the requirements of subsection (a) of this section 5 as to personal delivery or mailing of copies of notices and in respect to the provisions of subsection (e) of this section 5, no such request for copies of published notices and no statement or allegation in such request and no recordation thereof shall affect title to any mining claim or to any land or be deemed to constitute constructive notice to any person that the person requesting copies has, or claims, any right, title, or interest in or under any mining claim referred to in such request.

§ 3514.2 Waiver of rights by mining claimants.

Section 6 of the act provides as follows:

The owner or owners of any unpatented mining claim heretofore located may waive and relinquish all rights thereunder which are contrary to or in conflict with the limitations or restrictions specified in section 4 of this act as to hereafter located unpatented mining claims. The execution and acknowledgment of such a waiver and relinquishment by such owner or owners and the recordation thereof in the office where the notice or certificate of location of such mining claim is of record shall render such mining claim thereafter and prior to issuance of patent subject to the limitations and restrictions in section 4 of this act in all respects as if said mining claim had been located after enactment of this act, but no such waiver or relinquishment shall be deemed in any manner to constitute any concession as to the date of priority of rights under said mining claim or as to the validity thereof.

§ 3514.3 Protection of existing rights; exclusion of reservation in patents.

The act in section 7 provides as follows:

Nothing in this act shall be construed in any manner to limit or restrict or to authorize the limitation or restriction of any existing rights of any claimant under any valid mining claim heretofore located, except as such rights may be limited or restricted as a result of a proceeding pursuant to section 5 of this act, or as a result of a waiver and relinquishment pursuant to section 6 of this act; and nothing in this act shall be construed in any manner to authorize inclusion in any patent hereafter issued under the mining laws of the United States for any mining claim heretofore or hereafter located, of any reservation, limitation, or restriction not otherwise authorized by law, or to limit or repeal any existing authority to include any reservation, limitation, or restriction in any such patent, or to limit or restrict any use of the lands covered by any patented or unpatented mining claim by the United States, its lessees, permittees, and licensees which is otherwise authorized by law.

This section makes it clear that all of the rights of mining claimants existing on the date of the act are preserved and will continue unless: (a) Claimant fails, subject, however, to the provisions of § 3512.7, to file a verified statement in response to a published notice as provided in section 5(b) of the act and § 3512.9; (b) it is determined as a result of a hearing pursuant to section 5(c) that such rights asserted in a verified statement are not valid and effective; (c) the claimant waives and relinquishes his rights pursuant to section 6. It also preserves to all mining claimants the right to a patent unrestricted by anything in the act and provides that no limitation, reservation or restriction may be inserted in any mineral patent unless authorized by law, but it also makes it clear that all laws in force on the date of its enactment which provide for any such reservation, limitation, or restriction in such patents and all authority of law then existing for the use of lands embraced in unpatented mining claims by the United States, its lessees, permittees, and licensees continue in full force and effect.

PART 3530—PUBLIC LAW 359; MINING IN POWERSITE WITHDRAWALS

Subpart 3530—Public Law 359; Mining in Powersite Withdrawals; General

Sec.
3530.0–1 Purpose.
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3534.1 Act ineffective as to other withdrawals.

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3535.1 Prospecting and development at financial risk of party or parties doing work.
3535.2 United States no liable except for negligence.

Subpart 3536—Location and Assessment

3536.1 Owner of claim to file notice of location and assessment work.

Subpart 3537—Prior Existing Mining Locations

3537.1 No limitation or restriction of rights under valid claims located prior to withdrawal.
3537.2 No limitation of rights where claimant in diligent prosecution of work when future withdrawals made.

Subpart 3538—Use

3538.1 Mining claim and millsite use.

AUTHORITY: The provisions of this Part 3530 issued under R.S. 2478, as amended, sec. 2, 69 Stat. 682; 43 U.S.C. 1201, 30 U.S.C. 1201.

Subpart 3530—Public Law 359; Mining in Powersite Withdrawals; General

§ 3530.0–1 Purpose.

The act of August 11, 1955 (69 Stat. 681), was enacted "To permit the mining, development, and utilization of the mineral resources of all public lands withdrawn or reserved for power development, and for other purposes". The regulations in this part are intended to implement those parts of the act which require action by the Department of the Interior. The expression "act" shall mean the act of August 11, 1955 (69 Stat. 681), cited in the act as the "Mining Claims Rights Restoration Act of 1955".

§ 3530.0–3 Authority; lands opened.

(a) The act in section 2 provides in part as follows:

All public lands belonging to the United States heretofore, now or hereafter withdrawn or reserved for power development or power sites shall be open to entry for location and patent of mining claims and for mining, development, beneficiation, removal, and utilization of the mineral resources of such lands under applicable Federal statutes; * * * that nothing contained herein shall be construed to open for the purposes described in this section any lands (1) which are included in any project operating or being constructed under a license or permit issued under the Federal Power Act or other act of Congress, or (2) which are under examination and survey by a prospective licensee of the Federal Power Commission, if such prospective licensee holds an uncanceled preliminary permit issued under the Federal Power Act authorizing him to conduct such examination and survey with respect to such lands and such permit has not been renewed in the case of such prospective licensee more than once.

(b) The act in the second proviso thereof provides:

That locations made under the act within the revested Oregon and California Railroad and reconveyed Coos Bay Wagon grant lands shall also be subject to the provisions of the Act of April 8, 1948 (62 Stat. 162).

Subpart 3531—Power Rights

§ 3531.1 Power rights retained in the United States.

(a) The act in the first proviso provides as follows:

That all power rights to such lands shall be retained by the United States.

(1) Under this proviso every patent issued for such a location must contain a reservation unto the United States, its permittees or licensees of the right to enter upon, occupy and use, any part of the lands for power purposes without any claim or right to compensation accruing to the locator or successor in interest from the occupation or use of any of the lands within the location, for such purposes. Furthermore, the patent will contain a provision that the United States, its permittees and licensees shall not be responsible or held liable or incur any liability for the damage, destruction, or loss of any mining claim, mill site, facility installed or erected, income, or other property or investments resulting from the actual use of such lands or portions thereof for power development at any time where such power development is made by or under the authority of the United States, except where such damage, destruction, or loss results from the negligence of the United States, its permittees and licensees.

Subpart 3532—Mining Operations

§ 3532.1 Placer locator to conduct no mining operations for 60 days.

(a) The act in section 2(b) provides in part as follows:

The locator of a placer claim under this Act, however, shall conduct no mining operations for a period of sixty days after the filing of a notice of location pursuant to section 4 of this Act. If the Secretary of the Interior, within sixty days from the filing of the notice of location, notifies the locator by registered mail of the Secretary's intention to hold a public hearing to determine whether placer mining operations would substantially interfere with other uses of the land included within the placer claim, mining operations on that claim shall be further

suspended until the Secretary has held the hearing and has issued an appropriate order. The order issued by the Secretary of the Interior shall provide for one of the following: (1) a complete prohibition of placer mining; (2) a permission to engage in placer mining upon the condition that the locator shall, following placer operations, restore the surface of the claim to the condition in which it was immediately prior to those operations; or (3) a general permission to engage in placer mining. No order by the Secretary with respect to such operations shall be valid unless a certified copy is filed in the same State or county office in which the locator's notice of location has been filed, in compliance with the United States mining laws.

(b) Upon receipt of a notice of location of a placer claim filed in accordance with § 3536 for land subject to location under the act, a determination will be made by the authorized officer of the Bureau of Land Management as to whether placer mining operations on the land may substantially interfere with other uses thereof. If it is determined that placer operations may substantially interfere with other uses, a notice of intention to hold a hearing will be sent to each of the locators by registered or certified mail within 60 days from date of filing of the location notice.

§ 3532.2 Hearing, notice of protest.

(a) If a hearing is to be held, notice of the hearing will be delivered personally or by registered mail or certified mail to the locator of the placer claim. The notice will indicate the time and place of hearing. The procedures with respect to service of notice of hearing and conduct thereof shall follow the provisions of appeals and contests of the Department of the Interior (Part 1850 of this title) in effect at the time the hearing is held. No publication of the notice will be required but a copy thereof shall be posted in the proper land office of the Bureau of Land Management for a period of not less than 30 days prior to the date set for the hearing. The manager shall give such publicity to the hearing as may be done without expense to the Government.

(b) Any party, other than a Federal agency, desiring to appear and testify at a hearing in protest to placer mining operations must file a written notice of protest in the land office wherein the notice of hearing is posted. Such notice, accompanied by a $10 filing fee, must contain the party's name and address and a statement showing the nature of the party's interest in the use of the lands embraced within the mining claim. Each notice of protest must be filed within the period of time specified in the notice of hearing. The manager shall forward a copy of each such notice that is filed to the mining locator prior to the hearing. Each party appearing at the hearing shall pay the reporter's fee covering the testimony of the party and of his witnesses and his cross-examination of any other party or witnesses.

(c) Following the hearing, the examiner will render a decision, subject to the right of appeal by any person admitted as a party to the hearing in accordance with the provisions of appeals and contests of the Department of the Interior (Part 1850 of this title). Each decision by an examiner, or upon appeal, shall provide for the issuance of an appropriate order as provided in section 2(b) of the act; but no such order shall issue until the decision, upon which it is based, becomes final. A certified copy of any order issued shall be filed in the same State or county office in which the location notice has been filed. Any such order permitting mining operations shall be filed at the expense of the mining locator.

Subpart 3533—Surface Protection

§ 3533.1 Bond or deposit required.

Should a limited order be issued under section 2 (b) (2) of the act, the locator is required to furnish a bond in a sum determined by the Examiner. The bond must be either a corporate surety bond or a personal bond accompanied by cash or negotiable Federal securities equal at their par value to the amount of the penal sum of the bond, together with power-of-attorney to the Secretary of the Interior or his delegate.

§ 3533.2 Restoration of surface condition.

If the locator fails or refuses to restore the surface, appropriate action will be taken against him and his surety, including the appropriation of any money deposited on personal bonds, to be used for the purpose of restoring the surface of the claim involved. Any moneys on deposit or received from surety in excess of the amount needed for the restoration of the surface of the particular claim shall be refunded.

Subpart 3534—Withdrawals Other Than for Powersite Purposes

§ 3534.1 Act ineffective as to other withdrawals.

(a) The act in section 2(c) provides as follows:

> Nothing in this act shall affect the validity of withdrawals or reservations for purposes other than power development.

(b) If the power site lands are also affected by any other type of withdrawal which prevents mining location in whole or in part, the provisions of the act apply only to the extent that the lands are otherwise open to location.

Subpart 3535—Operations Risk

§ 3535.1 Prospecting and development at financial risk of party or parties doing work.

The act in section 3 provides in part as follows:

> Prospecting and exploration for and the development and utilization of mineral resources authorized in this act shall be entered into or continued at the financial risk of the individual party or parties undertaking such work.

§ 3535.2 United States not liable except for negligence.

The act in section 3 provides in part as follows:

Provided, That the United States, its permittees and licensees shall not be responsible or held liable or incur any liability for the damage, destruction, or loss of any mining claim, mill site, facility installed or erected, income, or other property or investments resulting from the actual use of such lands or portions thereof for power development at any time where such power development is made by or under the authority of the United States, except where such damage, destruction, or loss results from the negligence of the United States, its permittees and licensees.

Subpart 3536—Location and Assessment

§ 3536.1 Owner of claim to file notice of location and assessment work.

(a) The act in section 4 provides as follows:

The owner of any unpatented mining claim located on land described in section 2 of this act shall file for record in the United States district land office of the land district in which the claim is situated (1) within one year after the effective date of this act, as to any or all locations heretofore made, or within sixty days of location as to locations hereafter made, a copy of the notice of location of the claim; (2) within sixty days after the expiration of any annual assesment year, a statement as to any work done or improvements made during the previous assessment year.

(b) Neither section 4 nor any other provision of the act validates any mining location made prior to the act, which is invalid because made on lands after they were withdrawn or reserved for power purposes and before a favorable determination by the Federal Power Commission under section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1063; 1075), as amended (16 U.S.C. 792; 818) and the opening or restoration of the lands to location. Section 4 applies to unpatented locations for lands referred to in § 3530.0–3(a) only if:

(1) The location was made on or after August 11, 1955, or

(2) The location was made prior to August 11, 1955, and prior to the withdrawal or reservation of the lands for power purposes, or

(3) The location was made prior to August 11, 1955, on lands restored to location from a powersite reserve or withdrawal subject to section 24 of the Federal Power Act.

(c) The owner of an unpatented location coming under paragraph (b)(1) of this section, within sixty days from the date of location shall file in the United States land office for the district in which the lands lie, a copy of the notice or certificate of location and within sixty days after the expiration of each assessment year, a statement as to the assessment work done or improvements made during that assessment year. For identification purposes only, the copy of the location notice or certificate, filed in the land office under this subsection, should contain a notation that it was filed under the Act of August 11, 1955.

(d) The owner of an unpatented location coming under either paragraph (b)(2) or (3) of this section, before August 11, 1956 shall have filed in the United States land office for the district in which the lands lie a copy of the notice or certificate of location and within 60 days from the date of expiration of the assessment year which ended noon July 1, 1956 and within 60 days from the date of expiration of each succeeding assessment year, shall file a statement as to the assessment work done or improvements made during the previous assessment year.

Subpart 3537—Prior Existing Mining Locations

§ 3537.1 No limitation or restriction of rights under valid claims located prior to withdrawal.

(a) The act in section 5 provides:

Nothing in this act contained shall be construed to limit or restrict the rights of the owner or owners of any valid mining claim located prior to the date of withdrawal or reservation: *Provided,* That nothing in this act shall be construed to limit or restrict the rights of the owner or owners of any mining claim who are diligently working to make a discovery of valuable minerals at the time any future withdrawal or reservation for power development is made.

(b) Although the act does not limit or restrict the rights of owners of locations to which section 5 refers, such owners shall comply with section 4 by making the filings required either by paragraphs (c) or (d) of § 3536.1 whichever is applicable.

§ 3537.2 No limitation of rights where claimant in diligent prosecution of work when future withdrawals made.

(a) Under section 5 of the act the rights to a location made prior to any future withdrawal or reservation for power development or one on which the locator was diligently working to make a discovery of valuable minerals are not limited or restricted.

Subpart 3538—Use

§ 3538.1 Mining claim and millsite use.

(a) The act in section 6 provides as follows:

Notwithstanding any other provisions of this act, all mining claims and mill sites or mineral rights located under the terms of this act or otherwise contained on the public lands as described in section 2 shall be used only for the purposes specified in section 2 and no facility or activity shall be erected or conducted thereon for other purposes.

(b) Under this section, a mining claim or mill site may not be used for purposes other than for legitimate mining and milling. The claimant, therefore, may not erect on the mining claim any facility or activity such as filling stations, curio shops, cafes, tourist or hunting and fishing lodges, or conduct such businesses thereon.

PART 3540—PUBLIC LAW 585; MULTIPLE MINERAL DEVELOPMENT

Subpart 3540—Public Law 585, Multiple Mineral Development; General

Sec.
3540.0–1 Purpose.

Subpart 3541—Claims, Locations and Patents

3541.1 Validation of certain mining claims.
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3541.4 Reservation to United States of Leasing Act minerals.
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Subpart 3542—Procedure to Determine Claims

3542.1 Procedure to determine claims to Leasing Act minerals under unpatented mining locations.
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3542.3 Request for publication of notice of Leasing Act filing; supporting instruments.
3542.4 Publication of request.
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3542.6 Mailing of copies of published notice.
3542.7 Service of copies; failure to comply.
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3542.9 Failure of mining claimant to file verified statement.

Subpart 3543—Hearing

3543.1 Hearing; time and place.
3543.2 Stipulation between parties.
3543.3 Hearing; procedure.
3543.4 Effect of decision affirming a mining claimant's rights.
3543.5 Recording by mining claimant of request for copy of notice.
3543.6 Relinquishment by mining claimant of Leasing Act minerals.

Subpart 3544—Helium

3544.1 Helium Reserves Nos. 1 and 2; conditions of opening to mining location and mineral leasing.

Subpart 3545—Fissionable Source Materials

3545.1 Fissionable source materials; elimination of reservation in patents, etc.

Sec.
3545.2 Elimination of fissionable source materials reservations.
3545.3 Mining locations for fissionable source materials.

AUTHORITY: The provisions of this Part 3540 issued under R.S. 2478; as amended; 43 U.S.C. 1201. Interpret or apply sec. 1, 68 Stat. 708; U.S.C. 521.

Subpart 3504—Public Law 585; Multiple Mineral Development; General

§ 3540.1 Purpose.

The act of August 13, 1954 (68 Stat. 708, 30 U.S.C. 521 et seq.), was enacted "To amend the mineral leasing laws and the mining laws to provide for multiple mineral development of the same tracts of public lands, and for other purposes." The regulations in this part are intended to implement only those sections of said act, hereinafter more fully identified, which require action by the Department of the Interior or its agencies. The expression "act" when used in this part, means the act of August 13, 1954 (68 Stat. 708). The expression "Leasing Act", when used in this part, refers to the "mineral leasing laws" as defined in section 11 of the act of August 13, 1954 (68 Stat 708).

Subpart 3541—Claims, Locations and Patents

§ 3541.1 Validation of certain mining claims.

The act in section 1(a) provides as follows:

That (a) subject to the conditions and provisions of this act and to any valid intervening rights acquired under the laws of the United States, any mining claim located under the mining laws of the United States subsequent to July 31, 1939, and prior to February 10, 1954, on lands of the United States, which at the time of location were—

(1) Included in a permit or lease issued under the mineral leasing laws; or

(2) Covered by an application or offer for a permit or lease which had been filed under the mineral leasing laws; or

(3) Known to be valuable for minerals subject to disposition under the mineral leasing laws.

shall be effective to the same extent in all respects as if such lands at the time of location, and at all times thereafter, had not been so included or covered or known: *Provided, however,* That, in order to be entitled to the benefits of this act, the owner of any such mining claim located prior to January 1, 1953, must have posted and filed for record, within the time allowed by the provisions of the act of August 12, 1953 (67 Stat. 539) [not later than December 10, 1953.] an amended notice of location as to such mining claim, stating that such notice was filed pursuant to the provisions of said act of August 12, 1953, and for the purpose of obtaining the benefits thereof: *And provided further,* That in order to obtain the benefits of this act, the owner of any such mining claim located subsequent to December 31, 1952, and prior to February 10, 1954, not later than one hundred and twenty days after the date of enactment of this act, must post on such claim in the manner required for posting notice of location of mining claims and file for record in the office where the notice or certificate of location of such claim is of record an amended notice of location for such claim, stating that such notice is filed pursuant to the provisions of this act, and for the purpose of obtaining the benefits thereof and, within said one hundred and twenty day period, if such owner shall have filed a uranium lease application as to the tract covered by such mining claim, must file with the Atomic Energy Commission a withdrawal of such uranium lease application or, if a uranium lease shall have issued pursuant therto, a release of such lease, and must record a notice of the filing of such withdrawal or release in the county office wherein such notice or certificate of location shall have been filed for record.

§ 3541.2 Preference mining locations.

The act in section 3 (a) and (b) provides as follows:

(a) Subject to the conditions and provisions of this Act and to any valid prior rights acquired under the laws of the United

States, the owner of any pending uranium lease application or of any uranium lease shall have, for a period of one hundred and twenty days after the date of enactment of this act, as limited in subsection (b) of this section 3, the right to locate mining claims upon the lands covered by said application or lease.

(b) Any rights under any such mining claim so hereafter located pursuant to the provisions of subsection (a) of this section 3 shall be subject to any rights of the owner of any mining claim which was located prior to February 10, 1954, and which was valid at the date of the enactment of this act or which may acquire validity under the provisions of this act. As to any lands covered by a uranium lease and also by a pending uranium lease application, the right of mining location under this section 3, as between the owner of said lease and the owner of said application, shall be deemed as to such conflict area to be vested in the owner of said lease. As to any lands embraced in more than one such pending uranium lease application, such right of mining location, as between the owners of such conflicting applications, shall be deemed to be vested in the owner of the prior application. Priority of such an application shall be determined by the time of posting on a tract then available for such leasing of a notice of lease application in accordance with paragraph (c) of the Atomic Energy Commission's Domestic Uranium Program Circular 7 (10 CFR 60.7 (c)) provided there shall have been timely compliance with the other provisions of said paragraph (c) or, if there shall not have been such timely compliance, then by the time of the filing of the uranium lease application with the Atomic Energy Commission. Any rights under any mining claim located under the provisions of this section 3 shall terminate at the expiration of thirty days after the filing for record of the notice or certificate of location of such mining claim unless, within said 30-day period, the owner of the uranium lease application or uranium lease upon which the location of such mining claim was predicated shall have filed with the Atomic Energy Commission a withdrawal of said application or a release of said lease and shall have recorded a notice of the filing of such withdrawal or release in the county office wherein such notice or certificate of location shall be of record.

§ 3541.3 Additional evidence required with application for patent.

All questions between mining claimants asserting conflicting rights of possession under mining claims, must be adjudicated in the courts. Any applicant for mineral patent, who claims benefits under sections 1 or 3 of this act, or the act of August 12, 1953, supra, in addition to matters required in Group 3400 of this chapter, must file with his Application for Patent a certified copy of each instrument required to have been recorded as to his mining claim in order to entitle it to such benefits unless an Abstract of Title or Certificate of Title filed with the Application for Patent shall set forth said instruments in full. If a mining claim was located on or after the date of this act a statement must be filed showing that on the date of location the lands affected were not covered by a uranium lease or an application for a uranium lease. The applicant must also file a copy of the notice required to be posted on the claim and state in his application that such notice was duly posted in accordance with the requirements of the act.

§ 3541.4 Reservation to United States of Leasing Act minerals.

Section 4 of the act provides that:

Every mining claim or millsite—

(1) Heretofore located under the mining laws of the United States which shall be entitled to benefits under the first three sections of this Act; or

(2) Located under the mining laws of the United States after the effective date of passage of this act, shall be subject, prior to issuance of a patent therefor, to a reservation to the United States of all Leasing Act minerals and of the right (as limited in section 6 hereof) of the United States, its lessees, permittees, and licensees to enter upon the land covered by such mining claim or millsite and to prospect for, drill for, mine, treat, store, transport, and remove Leasing Act minerals and to use so much of the surface and subsurface of such mining claim or millsite as may be necessary for such purposes, and whenever reasonably necessary, for the purpose of prospecting for, drilling for, mining, treating, storing, transporting, and removing Leasing Act minerals on and from other lands; and any patent issued for any such mining claim or millsite shall contain such reservation as to, but only as to, such lands covered thereby which at the time of the issuance of such patent were—

(a) Included in a permit or lease issued under the mineral leasing laws; or

(b) Covered by an application or offer for a permit or lease filed under the mineral leasing laws; or

(c) Known to be valuable for minerals subject to disposition under the mineral leasing laws.

§ 3541.5 Mining claims and millsites located on Leasing Act lands after August 13, 1954.

Since enactment of the act on August 13, 1954, and subject to its conditions and provisions, including the reservation of Leasing Act minerals to the United States as provided in section 4, mining claims and millsites may be located under the mining laws of the United States on lands of the United States which at the time of location are—

(a) Included in a permit or lease issued under the mineral leasing laws; or

(b) Covered by an application or offer for a permit or lease filed under the mineral leasing laws; or

(c) Known to be valuable for minerals subject to disposition under the mineral leasing laws: This is inclusive of lands in petroleum reserves, except Naval petroleum reserves;

to the same extent in all respects as if such lands were not so included or covered or known.

§ 3541.6 Acquisition of Leasing Act minerals in lands covered by mining claims and millsites.

The Leasing Act minerals in lands covered by mining claims and millsites located after the date of the act or validated pursuant to the act may be ac-

quired under the mineral leasing laws, upon appropriate application therefor being filed prior to the issuance of patent to such mining claims or millsites, or after the issuance of patent, if the patent contains a reservation of Leasing Act minerals to the United States as provided in section 4 of the act.

Subpart 3542—Procedure To Determine Claims

§ 3542.1 Procedure to determine claims to Leasing Act minerals under unpatented mining locations.

Section 7 of the act provides a procedure whereby a Leasing Act applicant, offeror, permittee or lessee may have determined the existence and validity of claims to Leasing Act minerals asserted under unpatented mining locations made prior to August 13, 1954, affecting lands embraced within such application, offer, permit or lease. This procedure is described in the succeeding regulations, and involves the prior recording of notice of such application, offer, permit or lease and the filing of a request for publication of notice of the same.

§ 3542.2 Recordation of notice of application, offer, permit or lease.

Not less than 90 days prior to the filing of such request for publication, there must have been filed for record in the county office of record for each county in which lands covered thereby are situated, a notice of the filing of the application or offer, or of the issuance of the permit or lease, upon which said request for publication is based. Such notice must set forth the date of the filing of such application or offer or of the issuance of such permit or lease, the name and address of the applicant, offeror, permittee or lessee, and the description of the lands covered by such application, offer, permit or lease, showing the section or sections of the public land surveys which embrace such lands, or, if such lands are unsurveyed, either the section or sections which would probably embrace such lands when the public land surveys are extended to such lands, or a tie by courses and distances to an approved United States mineral monument.

§ 3542.3 Request for publication of notice of Leasing Act filing; supporting instruments.

(a) Having complied with the requirement of § 3542.2 the applicant, offeror, permittee or lessee may file a Request for Publication of notice of such party's application, offer, permit or lease. Such request for publication shall be filed in the appropriate land office. No Request for Publication, or publication, may include lands in more than one Land District.

(b) The filing of a Request for Publication must be accompanied by the following:

(1) A certified copy of the Notice of Application, offer, permit or lease setting forth the date of recordation thereof. The date of recordation shall be presumed to have been the date when the notice was filed for record unless the certified copy of the notice shows otherwise or is accompanied by an affidavit of the person filing the request for publication showing that the notice was filed for record on a date prior to the date of recordation.

(2) An affidavit or affidavits of a person or persons over 21 years of age, setting forth that the affiant or affiants have examined the lands involved in a reasonable effort to ascertain whether any person or persons were in actual possession of or engaged in the working of the lands covered by such request or any part thereof. If no person or persons were found to be in actual possession of or engaged in the working of said lands or any part thereof, on the date of such examination, such affidavit or affidavits shall set forth such fact. If any person or persons were so found to be in actual possession or engaged in such working on the date of such examination, such affidavit or affidavits shall set forth the name and address of each such person unless the affiant shall have been unable, through reasonable inquiry, to obtain information as to the name and address of such person; in which event, the affidavit or affidavits shall set forth fully the nature and the results of such inquiry.

(3) The certificate of a title or abstract company, or of a title abstractor, or of an attorney, based upon such company's, abstractor's or attorney's examination of the instruments affecting the lands involved, of record in the public records of the county in which said lands are situate as shown by the indices of the public records in the county office of record for said county, setting forth the name of any person disclosed by said instruments to have an interest in said lands under any unpatented mining claim located prior to enactment of the Act on August 13, 1954, together with the address of such person if disclosed by such instruments of record.

(4) A nonrefundable $10 remittance to cover service charge.

§ 3542.4 Publication of request.

(a) Upon receipt of a Request for Publication and accompanying instruments, if all is found regular, the Manager, or the Director, as may be appropriate, at the expense of the requesting person (who prior to the commencement of publication must furnish the agreement of the publisher to hold such requesting person alone responsible for charges of publication), shall cause notice of the application, offer, permit or lease to be published in a newspaper, to be designated by the Manager, or the Director, as may be appropriate, having general circulation in the county in which the lands involved are situated.

(b) If such notice is published in a daily paper, it shall be published in the Wednesday issue for 9 consecutive weeks, or, if in a weekly paper, in 9 consecutive issues, or, if in a semi-weekly or tri-weekly paper, in the issue of the same day of each week for 9 consecutive weeks.

§ 3542.5 Contents of published notice.

The notice to be published as required by the preceding section, shall describe the lands covered by the application, offer, permit or lease in the same

manner as is required under § 3542.2. Such published notice shall notify whomever it may concern, that if any person claiming or asserting under, or by virtue of, any unpatented mining claim located prior to enactment of the act of August 13, 1954, any right or interest in Leasing Act minerals as to such lands or any part thereof, shall fail to file in the office where such Request for Publication was filed (which office shall be specified in such notice), and within 150 days from the date of the first publication of such notice (which date shall be specified in such notice), a verified statement which shall set forth, as to such unpatented mining claim:

(1) The date of location;

(2) The book and page of recordation of the notice or certificate of location;

(3) The section or sections of the public land surveys which embrace such mining claim; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument;

(4) Whether such claimant is a locator or purchaser under such location; and

(5) The name and address of such claimant and names and addresses so far as known to the claimant of any other person or persons claiming any interest or interests in or under such unpatented mining claim; such failure shall be conclusively deemed (i) to constitute a waiver and relinquishment by such mining claimant of any and all right, title, and interest under such mining claim as to, but only as to, Leasing Act minerals, and (ii) to constitute a consent by such mining claimant that such mining claim and any patent issued therefor, shall be subject to the reservation of Leasing Act minerals specified in section 4 of the act, and (iii) to preclude thereafter any assertion by such mining claimant of any right or title to or interest in any Leasing Act mineral by reason of such mining claim.

§ 3542.6 Mailing of copies of published notice.

Within fifteen days after the date of first publication, the person requesting such publication shall:

(a) Cause a copy of such notice to be personally delivered to or to be mailed by registered mail addressed to each person in possession or engaged in the working of the land whose name and address is shown by the affidavit or affidavits of examination of the land filed, as set forth in § 3542.3.

(b) Cause a copy of such notice to be personally delivered to or to be mailed by registered mail addressed to each person who may, on or before the date of first publication, have filed for record, as to any lands described in the published notice, a Request for Notices, as provided in subsection (d) of section 7 of the act (see § 3543.5);

(c) Cause a copy of such notice to be mailed by registered mail to each person whose name and address is set forth in the certificate required to be filed under § 3542.3 and

(d) File in the office where the Request for Publication was filed an affidavit that copies have been delivered or mailed as herein specified. Notwithstanding the requirements in paragraphs (a), (b) and (c) of this section, not more than one copy of such notice need be delivered or mailed to the same person.

§ 3542.7 Service of copies; failure to comply.

If any applicant, offeror, permittee or lessee requesting publication of notice under these regulations shall fail to comply with the requirements of section 7(a) of the act as to personal delivery or mailing of a copy of the published notice to any person, the publication of such notice shall be deemed wholly ineffectual as to that person or as to the rights asserted by that person and the failure of that person to file a verified statement, as provided in such notice shall in no manner affect, diminish, prejudice or bar any rights of that person.

§ 3542.8 Proof of publication.

After the period of newspaper publication has expired, the person requesting publication shall obtain from the office of the newspaper of publication, a sworn statement that the notice was published at the time and in accordance with the requirements under these regulations of this part, and shall file such sworn statement in the office where the Request for Publication was filed.

§ 3542.9 Failure of mining claimant to file verified statement.

If any claimant under any unpatented mining claim located prior to enactment of the act on August 13, 1954, which embraces any of the lands described in any notice published in accordance with the regulations in this part shall fail to file a verified statement, as specified in such published notice within one hundred and fifty days from the date of the first publication of such notice, such failure shall be conclusively deemed, except as otherwise provided in § 3542.7.

(a) To constitute a waiver and relinquishment by such mining claimant of any and all right, title, and interest under such mining claim as to, but only as to, Leasing Act minerals, and

(b) To constitute a consent by such mining claimant that such mining claim and any patent issued therefor, shall be subject to the reservation of Leasing Act minerals specified in section 4 of the act and

(c) To preclude thereafter any assertion by such mining claimant of any right or title to or interest in any Leasing Act minerals by reason of such mining claim.

Subpart 3543—Hearing

§ 3543.1 Hearing; time and place.

If any verified statement shall be filed

by a mining claimant then the Manager of the Land Office, or the Director, as may be appropriate, shall fix a time and place for a hearing to determine the validity and effectiveness of the mining claimant's asserted right or interest in Leasing Act minerals. Such place of hearing shall be in the county where the lands in question, or part thereof, are located, unless the mining claimant agrees otherwise.

§ 3543.2 Stipulation between parties.

If at any time prior to a hearing the person requesting publication of notice and any person filing a verified statement pursuant to such notice shall so stipulate, then to the extent so stipulated, but only to such extent, no hearing shall be held with respect to rights asserted under that verified statement, and to the extent defined by the stipulation the rights asserted under that verified statement shall be deemed to be unaffected by the notice published pursuant to that request.

§ 3543.3 Hearing; procedure.

The procedures with respect to notice of such hearing and the conduct thereof, and in respect to appeals, shall follow the provisions of Appeals and Contests of the Department of the Interior and the Bureau of Land Management (Part 1850 of this chapter) relating to contests or protests affecting public lands of the United States.

§ 3543.4 Effect of decision affirming a mining claimant's rights.

If, pursuant to a hearing held as provided in the regulations of this part, the final decision rendered in the matter shall affirm the validity and effectiveness of any mining claimant's right or interest under a mining claim as to Leasing Act minerals, then no subsequent proceedings under section 7 of the act and the regulations of this part shall have any force or effect upon the so-affirmed right or interest of such mining claimant under such mining claim.

§ 3543.5 Recording by mining claimant of request for copy of notice.

Section 7(d) of the act provides that:

Any person claiming any right in Leasing Act minerals under or by virtue of any unpatented mining claim heretofore located and desiring to receive a copy of any notice of any application, offer, permit, or lease which may be published as above provided in subsection (a) of this section 7, and which may affect lands embraced in such mining claim, may cause to be filed for record in the county office of record where the notice or certificate of location of such mining claim shall have been recorded, a duly acknowledged request for a copy of any such notice. Such request for copies shall set forth the name and address of the person requesting copies and shall also set forth, as to each mining claim under which such person asserts rights in Leasing Act minerals:

(1) The date of location;

(2) The book and page of the recordation of the notice or certificate of location; and

(3) The section or sections of the public land surveys which embrace such mining claim; or, if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument.

Other than in respect to the requirements of subsection (a) of this section 7 as to personal delivery or mailing of copies of notices and in respect to the provisions of subsection (e) of this section 7, no such request for copies of published notices and no statement or allegation in such request and no recordation thereof shall affect title to any mining claim or to any land or be deemed to constitute constructive notice to any person that the person requesting copies has, or claims, any right, title, or interest in or under any mining claim referred to in such request.

§ 3543.6 Relinquishment by mining claimant of Leasing Act minerals.

Section 8 of the act provides that:

The owner or owners of any mining claim heretofore located may, at any time prior to issuance of patent therefor, waive and relinquish all rights thereunder to Leasing Act minerals. The execution and acknowledgment of such a waiver and relinquishment by such owner or owners and the recordation thereof in the office where the notice or certificate of location of such mining claim is of record shall render such mining claim thereafter subject to the reservation referred to in section 4 of this Act and any patent issued therefor shall contain such a reservation, but no such waiver or relinquishment shall be deemed in any manner to constitute any concession as to the date of priority of rights under said mining claim or as to the validity thereof.

Subpart 3544—Helium

§ 3544.1 Helium Reserves Nos. 1 and 2; conditions of opening to mining location and mineral leasing.

(a) Section 9 of the act provides that:

Lands withdrawn from the public domain which are within (a) Helium Reserve Numbered 1, pursuant to Executive Orders of March 21, 1924, and January 28, 1926, and (b) Helium Reserve Numbered 2 pursuant to Executive Order 6184 of June 26, 1933, shall be subject to entry and location under the mining laws of the United States, and to permit and lease under the mineral leasing laws, upon determination by the Secretary of the Interior, based upon available geologic and other information, that there is no reasonable probability that operations pursuant to entry or location of the particular lands under the mining laws, or pursuant to a permit or lease of the particular lands under the Mineral Leasing Act, will result in the extraction or cause loss or waste of the helium-bearing gas in the lands of such reserves: *Provided,* That the lands shall not become subject to entry, location, permit, or lease until such time as the Secretary designates in an order published in the FEDERAL REGISTER: *And provided further,* That the Secretary may at any time as a condition to continued mineral operations require the entrymen, locator, permittee, or lessee to take such measures either above or below the surface of the lands as the Secretary deems necessary to prevent loss or waste of the helium-bearing gas.

(b) No mining location made and no application for permit or lease filed as to Helium Reserve land prior to the time of opening specified in the notice of opening published in the FEDERAL REGIS-

TER will confer any rights on the locator or applicant.

Subpart 3545—Fissionable Source Materials

§ 3545.1 Fissionable source materials; elimination of reservation in patents, etc.

Section 10(c) of the act in its amendment of section 5(b)7 of the Atomic Energy Act of 1946 (60 Stat. 755), eliminated the requirement for a reservation of fissionable source materials in patents, conveyances, leases, permits or other authorizations as to public lands or their mineral resources granted by the United States after August 1, 1946, and provided that in cases where any patent, conveyance, lease, permit or other authorization has been issued which reserved to the United States fissonable source materials and the right to enter upon the land and prospect for, mine and remove the same, the head of the department or agency which issued the patent, conveyance, lease, permit or other authorization shall, on application of the holder thereof, issue a new or supplemental patent, conveyance, lease, permit or other authorization without such reservation. The provisions of said section 10(c) are reenacted in section 68(c) of the Atomic Energy Act of 1954 (68 Stat. 921, 934).

§ 3545.2 Elimination of fissionable source materials reservations.

(a) Any person who holds a patent, conveyance, lease, permit or other authorization issued by the Department of the Interior through the Bureau of Land Management, with a fissionable source material reservation to the United States pursuant to section 5(b)7 of the Atomic Energy Act of 1946, prior to its amendment above referred to, and who is desirous of having such reservation eliminated from the patent, conveyance, lease, permit or other authorization, must file an application therefor in the appropriate land office.

(b) Such an application must set forth the name and address of the applicant, must fully identify the instrument from which elimination of such reservation is sought, by serial number, date, name of patentee, grantee, lessee, permittee or other designated recipient of authorization, and must set forth the description of the lands to which the application relates.

(c) If the application is for a new or supplemental patent or other conveyance, the applicant must file with and in support of the application, an abstract of title certified by a duly authorized and licensed abstractor of titles, or a certificate of title certified by a duly authorized and licensed title company, certified in either instance to a date inclusive of the date of the filing of such application and showing the applicant to be the holder and owner, as to the lands covered by the original patent, or conveyance. The successor to any original lease, permit or holder of other authorization is shown by the records of the Bureau of Land Management. Any new or supplemental patent, conveyance, lease, permit or other authorization, issued pursuant to such application, will be issued in the name of the applicant.

(d) If, as to any lands covered by a patent containing a fissionable source material reservation, any rights have been granted by the United States pursuant to such reservation, then any new or supplemental patent shall be made subject to those rights, but the patentee shall be subrogated to the rights of the United States.

(e) An application for a new or supplemental lease, permit or other authorization, must be filed by the record holder and owner of such lease, permit or other authorization as shown by the records of the Bureau of Land Management.

(f) If the application (and supporting abstract of title or title certificate, where required) be found to comply with the regulations in this part, the Manager of the Land Office will:

(1) Where the application is for a new or supplemental patent or conveyance, transmit the application, including the supporting abstract or title certificate, to the Director of the Bureau of Land Management for appropriate action; or

(2) Where the application is for a new or supplemental lease, permit or other authorization, forward to the applicant a supplement to and modification of the lease or permit or other authorization setting forth that the fissionable source material reservation of the original lease, permit or other authorization is thereby eliminated from said original lease, permit or other authorization insofar as it relates to the land covered by the application. No execution by an applicant of a so-issued supplemental and modification instrument shall be required.

(g) Appropriate notation shall be made upon the records of the Land Office in which any application was filed of the issuance pursuant thereto of a new or supplemental patent, conveyance, lease, permit or other authorization.

§ 3545.3 Mining locations for fissionable source materials.

(a) In view of the amendment of section 5(b)(7) of the Atomic Energy Act of 1946 by section 10(c) of the act of August 13, 1954 (68 Stat. 708), and of the provisions of the Atomic Energy Act of 1954 (68 Stat. 921), it is clear that after enactment of said act of August 13, 1954, valid mining locations under the mining laws of the United States may be based upon a discovery of a mineral deposit which is a fissionable source material.

(b) As to mining locations made prior to the enactment of said act of August 13, 1954, section 10(d) of the act provides:

(d) Notwithstanding the provisions of the Atomic Energy Act, and particulary sec. 5(b)(7) thereof, prior to its amendment hereby, or the provisions of the act of

August 12, 1953 (67 Stat. 539), and particularly sec. 3 thereof, any mining claim, heretofore located under the mining laws of the United States for or based upon a discovery of a mineral deposit which is a fissionable source material and which, except for the possible contrary construction of said Atomic Energy Act, would have been locatable under such mining laws, shall, insofar as adversely affected by such possible contrary construction, be valid and effective, in all respects to the same extent as if said mineral deposit were a locatable mineral deposit other than a fissionable source material.

PART 3630—AREAS SUBJECT TO SPECIAL MINING LAWS

Subpart 3631—O & C Lands

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Subpart 3631—O. & C. Lands

AUTHORITY: The provisions of this Subpart 3631 issued under R.S. 2478; 43 U.S.C. 1201.

§ 3631.1 General provisions.

(a) The act of April 8, 1948 (62 Stat. 162) reopens the revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands (hereinafter referred to in this section as the O. and C. lands) in Oregon, except power sites, to exploration, location, entry, and disposition under the United States Mining Laws. The act also validates mineral claims, if otherwise valid, located on the O. and C. lands during the period from August 28, 1937, to April 8, 1948.

(b) The procedure in the locating of mining claims, performance of annual labor, and the prosecution of mineral patent proceedings in connection with O. and C. lands is the same as provided by the United States Mining Laws and the general regulations in this part, and is also subject to the additional conditions and requirements hereinafter set forth.

§ 3631.2 Requirements for filing notices of locations of claims; descriptions.

(a) Where prior to April 8, 1948, a mining claim has been located upon O. and C. lands, the owner thereof must file for record, not later than October 5, 1948, in the land office of the land district in which the claim is situated, a copy of the notice of location of the claim. With respect to all mining claims located on O. and C. lands on or after April 8, 1948, the owner thereof must file for record, within 60 days of the date of such mining location, in the appropriate land office, a copy of the notice of location of the claim.

(b) If the location affects surveyed lands and the copy of location notice does not describe those legal subdivisions, section, township and range partly or wholly covered by the mining claim, the copy must be accompanied by a statement of the owner of the claim describing the legal subdivisions affected.

(c) If the location affects unsurveyed lands and the copy of location notice does not show the land described therein connected by course and distance to the nearest corner of the public land surveys and does not give the probable legal subdivisions affected if the lands were surveyed, the copy must be accompanied by a statement of the owner of the claim giving that information or satisfactory reasons for not doing so.

(d) The name and address of each owner of the claim should be furnished with the other data required by this section.

§ 3631.3 Requirement for filing statements of assessment work.

The owner of any unpatented mining claim located upon O. and C. lands must also file for record in the land office in which the claim is situated, within 60 days after the expiration of any annual assessment year, a statement as to the assessment work done or improvements made during the previous assessment year, or, as to compliance in lieu thereof, with any applicable relief act.

§ 3631.4 Restriction on use of timber; application for such use.

The owner of any unpatented mining claim located upon O. and C. lands on or after August 28, 1937, shall not acquire title, possessory or otherwise, to the timber, now or hereafter growing upon such claim. Such timber may be managed and disposed of under existing law or as may be provided by subsequent law. The owner of such unpatented mining claim, until such time as the timber is otherwise disposed of by the United States, if he wishes to cut and use so much of the timber upon his claim as may be necessary in the development and operation of his mine, shall file a written application with the district forester for permission to do so. The application shall set forth the estimated quantity and kind of timber desired and the use to which it will be put. The applicant shall not cut any of the timber prior to the approval of the application therefor.

§ 3631.5 Applications for final certificates and patents.

Applications for patents and final certificates in connection with mining claims located upon O. and C. lands on or after August 28, 1937 must be noted "Mining claims on O. and C. lands, under the act of April 8, 1948." All patents issued on such claims located on or after August 28, 1937, shall contain an appropriate reference to the act of April 8, 1948, and shall indicate that the patent is issued subject to the conditions and limitations of the act.

Subpart 3632—Olympic National Park, Washington

AUTHORITY: The provisions of this Subpart 3632 issued under sec. 2, 52 Stat. 1242; 16 U.S.C. 252.

§ 3632.0–3 Authority.

(a) By the act of Congress approved June 29, 1938 (52 Stat. 1241; 16 U.S.C. 251–255), the Mount Olympus National Monument was abolished and certain described lands, including the lands in the Monument, were reserved, withdrawn from disposal, and dedicated and set apart as a public park to be known as the Olympic National Park. The act provides that valid existing claims shall not be affected thereby.

(b) Section 2 of the act provides:

> That in the areas of said park lying east of the range line between ranges 9 and 10 and north of the seventh standard parallel, and east of the range line between ranges 4 and 5 west, Willamette meridian, all mineral deposits of the classes and kinds now subject to location, entry, and patent under the mining laws of the United States shall be, exclusive of the land containing them, subject to disposal under such laws for a period of five years from the date of approval of this Act, with rights of occupation and use of so much of the surface of the land as may be required for all purposes reasonably incident to the mining or removal of the minerals and under such general regulations as may be prescribed by the Secretary of the Interior.

§ 3632.1 Mining locations during 5-year period.

Under the provisions of section 2 of the act the lands within the area described in that section are, for a period of 5-years from the date of the act, open to prospecting for the kinds of mineral subject to location under the United States mining laws and upon discovery of any such mineral, locations may be made in accordance with the provisions of the mining laws and regulations thereunder. Such locations duly made within the 5-year period will carry all the rights and incidents of mining locations, except that they will give to the locator no title to the land within their boundaries, or claim thereto, except the right to occupy and use so much of the surface of the land as required for all purposes reasonably necessary to mine and remove the minerals, such occupation and use to be under general regulations prescribed by the Secretary of the Interior. No prospecting may be done or locations made on the land after the expiration of the 5-year period from the date of this act, but the right to remove mineral deposits from valid locations made during the 5-year period may be maintained thereafter by complying with the requirements of the United States mining laws and the regulations in this subpart.

§ 3632.2 Cutting of timber.

The locator of a mining claim within the area described in section 2 of the act may cut timber within the boundaries of his claim for mining and domestic uses only with the permission of the superintendent of the park or his representative who will designate the timber to be cut. All slash, brush or debris resulting from the cutting of timber upon mining claims shall be disposed of by the locator in such manner and at such time as may be designated by the National Park Service officer in charge so as to prevent the creation of fire hazards, or conditions conducive to the development of infestation by timber-destroying insects.

§ 3632.3 Construction of trails and roads.

Prospectors or miners shall not open or construct roads or vehicle trails without first obtaining a permit from the Director of the National Park Service. Applications for such permits may be made through the officer in charge of the park upon submitting a map or sketch showing the location of the mining property to be served and the location of the proposed road or vehicle trail. The permit may be conditioned upon the permittee maintaining the road or trail in a passable condition, satisfactory to the superintendent of the park, so long as it is used by the permittee or his successors.

§ 3632.4 Occupation and use of surface.

Occupation and use of the surface of a mining claim is restricted by section 2 of the act to such as is reasonably incident to the exploration, development and extraction of the minerals in the claim. Accordingly, any locator or patentee of a mining claim located under this section of the act will be entitled to such right. A locator or patentee shall not be entitled to the exclusive use of any hot or minerial springs which may be within the boundaries of his claim, or to any use of such springs for other than mining purposes. Prospectors and miners shall at all times conform to any rules now prescribed or which may be made applicable by the Secretary of the Interior to this park. Special attention is directed to those regulations prohibiting hunting, trapping, and the carrying of firearms within the boundaries of the park.

§ 3632.5 Termination of right to use of surface of mining claims.

The right of occupation and use of the surface of the land embraced in the boundaries of a location, entry or patent pursuant to section 2 of the act will terminate when the minerals are mined out or the claim is abandoned. Any locator of an unpatented claim who fails to perform annual assessment work on

his claim for any assessment period will be assumed to have abandoned his claim, and his right of occupation and use of the surface of the claim considered at an end.

§ 3632.6 Title to minerals only.

Applications for patents and final certificates issued thereon for mining claims located under section 2 of the act should be noted "Olympic National Park Lands", and all patents issued for such claims will convey title to the minerals under the act and this subpart.

Subpart 3633—Organ Pipe Cactus National Monument, Arizona

AUTHORITY: The provisions of this Subpart 3633 issued under 55 Stat. 745; 16 U.S.C. 450z.

§ 3633.0–3 Authority.

By the act of Congress approved October 27, 1941 (55 Stat. 745; 16 U.S.C. 450z), all mineral deposits of the classes and kinds then subject to location, entry and patent under the United States mining laws within the Organ Pipe Cactus National Monument in Arizona, were made, exclusive of the land containing them, subject to disposal under such laws, with right of occupation and use of so much of the surface of the land as may be required for all purposes reasonably incident to the mining or removal of the minerals and under such general regulations as may be prescribed by the Secretary of the Interior.

§ 3633.1 Mining locations.

The lands within the Organ Pipe Cactus National Monument as established by Proclamation No. 2232 dated April 13, 1937 (50 Stat. 1827), are open to prospecting for the kinds of mineral subject to location under the United States mining laws and upon discovery of any such mineral, locations may be made in accordance with the provisions of the mining laws and regulations thereunder. Such locations duly made will carry all the rights and incidents of mining locations, except that they will give to the locator no title to the land within their boundaries, or claim thereto except the right to occupy and use so much of the surface of the land as required for all purposes reasonably necessary to mine and remove the minerals.

§ 3633.2 Occupation and use of surface.

Occupation and use of the surface of a mining claim is restricted by the act to such as is reasonably incident to the exploration, development and extraction of the minerals in the claim. Accordingly, any locator or patentee of a mining claim located under this act will be entitled to such right. Prospectors and miners shall at all times conform to any rules now prescribed or which may be made applicable by the Secretary of the Interior to this monument. Special attention is directed to those regulations prohibiting hunting, trapping, and the carrying of firearms within the boundaries of the monument.

§ 3633.3 Termination of right to use of surface of mining claims.

The right of occupation and use of the surface of the land embraced in the boundaries of a location, entry or patent pursuant to this act will terminate when the minerals are mined out or the claim is abandoned.

§ 3633.4 Title to minerals only.

Applications for patents and final certificates issued thereon for mining claims located under the act should be noted "Organ Pipe Cactus National Monument Lands," and all patents issued for such claims will convey title to the minerals only, and contain appropriate reference to the act and these regulations.

§ 3633.5 Destroying vegetation prohibited.

The locator of a mining claim within the monument area shall refrain from destroying or disturbing vegetation within the boundaries of his claim except as is necessary for the proper development thereof for mining purposes.

§ 3633.6 Construction of trails and roads.

Prospectors or miners shall not open or construct roads or vehicle trails without first obtaining a permit from the Director of the National Park Service. Applications for such permits may be made through the officer in charge of the monument upon submitting a map or sketch showing the location of the mining property to be served and the location of the proposed road or vehicle trail. The permit may be conditioned upon the permittee maintaining the road or trail in a passable condition, satisfactory to the officer in charge, so long as it is used by the permittee or his successors.

§ 3633.7 Lands containing certain features not subject to location.

Lands containing springs, wells, water holes, other sources of water supply, monument headquarters, and recreation areas are not subject to location.

Subpart 3634—City of Prescott Watershed, Arizona

§ 3634.1 Minerals in city of Prescott watershed in Arizona.

(a) The act of January 19, 1933 (47 Stat. 771; 16 U.S.C. 482a) applies to approximately 3,600 acres in the city of Prescott municipal watershed, within the Prescott National Forest, Arizona. Rights acquired under mining locations made after the date of the act on any of the described lands are limited to the right to occupy and use so much of the surface of the land covered by the location as is reasonably necessary to carry on prospecting and mining, including the taking of mineral deposits and timber required by or in the mining operations; and patents for such locations shall convey title to the mineral deposits and a limited right to cut and remove timber for mining purposes, such patent to reserve to the United States all title in or to the surface of the lands and products thereof.

(b) The manager will note on the face of all applications for patent for mining claims embracing any of the described

lands that the same are subject to the conditions, provisions, limitations, and reservations of the act except applications for claims located prior to the date of the act and as to which the applicants expressly request patent under the provisions of the general mining laws. Patents issued subject to the act will contain appropriate conditions with respect to cutting of timber and reservation of surface in the United States.

(c) Under section 3 of the act (47 Stat. 771; 16 U.S.C. 482a), valid claims existing at the date of the act and thereafter maintained may be perfected under this act or under the law under which they were initiated, as the claimant may desire. Such claimant may, therefore, continue the development of his claim under the provisions of the act and secure patent for the mineral deposits only under its provisions, or he may continue to hold under the general mining laws and secure patent which will convey to him the surface as well as the minerals in the claim.

(R.S. 2478; 43 U.S.C. 1201)

Subpart 3635—Papago Indian Reservation

§ 3635.0–3 Mineral locations in Papago Indian Reservation, in Arizona.

(a) The act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461–479), as amended by the act of August 28, 1937 (50 Stat. 862; 25 U.S.C. 463), revokes departmental order of October 28, 1932, which temporarily withdrew from all forms of mineral entry or claim the lands within the Papago Indian Reservation and restores, as of June 18, 1934, such lands to exploration, location and purchase under the existing mining laws of the United States.

(b) The procedure in the location of mining claims, performance of annual labor and the prosecution of patent proceedings therefor shall be the same as provided by the United States mining laws and regulations thereunder, with the additional requirements hereinafter prescribed.

(c) In addition to complying with the existing laws and regulations governing the recording of mining locations with the proper local recording officer, the locator of a mining claim within the Papago Indian Reservation shall furnish to the superintendent or other officer in charge of the reservation, within 90 days of such location, a copy of the location notice, together with a sum amounting to 5 cents for each acre and 5 cents for each fractional part of an acre embraced in the location for deposit with the Treasury of the United States to the credit of the Papago Tribe as yearly rental. Failure to make the required annual rental payment in advance each year until an application for patent has been filed for the claim shall be deemed sufficient grounds for invalidating the claim. The payment of annual rental must be made to the superintendent or other officer in charge of the reservation each year on or prior to the anniversary date of the mining location.

(d) Where a mining claim is located within the reservation, the locator shall pay to the superintendent or other officer in charge of the reservation damages for the loss of any improvements on the land in such a sum as may be determined by the Secretary of the Interior to be a fair and reasonable value of such improvements, for the credit of the owner thereof. The value of such improvements may be fixed by the Commissioner, Bureau of Indian Affairs, with the approval of the Secretary of the Interior, and payment in accordance with such determination shall be made within 1 year from date thereof.

(e) At the time of filing with the manager an application for mineral patent for lands within the Papago Indian Reservation the applicant shall furnish, in addition to the showing required under the general mining laws, a statement from the superintendent or other officer in charge of the reservation, that he has deposited with the proper official in charge of the reservation for deposit in the Treasury of the United States to the credit of the Papago Tribe a sum equal to $1 for each acre and $1 for each fractional part of an acre embraced in the application for patent in lieu of annual rental, together with a statement from the superintendent or other officer in charge of the reservation that the annual rentals have been paid each year and that damages for loss of improvements, if any, have been paid.

(f) The act provides that in case patent is not acquired the sum deposited in lieu of annual rentals shall be refunded. Where patent is not acquired, such sums due as annual rentals but not paid during the period of patent application shall be deducted from the sum deposited in lieu of annual rental. Applications for refund shall be filed in the office of the manager and should follow the general procedure in applications for repayment.

(g) Water reservoirs, charcos, water holes, springs, wells, or any other form of water development by the United States or the Papago Indians shall not be used for mining purposes under the terms of the said act of August 28, 1937, except under permit from the Secretary of the Interior approved by the Papago Indian Council.

(h) A mining location may not be located on any portion of a 10 acre legal subdivision containing water reservoirs, charcos, water holes, springs, wells or any other form of water development by the United States or the Papago Indians except under a permit from the Secretary of the Interior approved by the Papago Indian Council which permit shall contain such stipulations, restrictions, and limitations regarding the use of the land for mining purposes as may be deemed necessary and proper to permit the free use of the water thereon by the United States or the Papago Indians.

(i) The term "locator" wherever used in this section shall include and mean his successors, assigns, grantees, heirs, and all others claiming under or through him.

(R.S. 2478; 43 U.S.C. 2101)

Subpart 3636—Glacier Bay National Monument

§ 3636.1 Mineral deposits in the Glacier Bay National Monument.

(a) Under the act of June 22, 1936 (49 Stat. 1817), the lands in the Glacier Bay National Monument, reserved by proclamation of February 26, 1925 (43 Stat. 1988), or as it may be extended are open to prospecting for the kinds of mineral now subject to location under the United States mining laws, and, upon discovery of any such mineral, locations may be made in accordance with the provisions of the mining laws and regulations thereunder. Such locations, duly made, will carry all the rights and incidents of mining locations, except that they will give to the locator no title to the land within their boundaries or claim thereto except the right to occupy and use so much of the surface of the land as required for all purposes reasonably necessary to mine and remove the minerals, such occupation and use to be under general regulations prescribed by the Secretary of the Interior.

(b) The owner of a mining location may cut such timber within the boundaries of his claim as is necessary for mining purposes. Prospectors may cut timber for their necessary mining and domestic uses only with the permission of the custodian of the monument or his representative who will designate the timber to be cut. All slash, brush or debris resulting from the cutting of timber upon mining claims or by prospectors shall be disposed of by the claimant or prospector in such manner and at such time as may be designated by the National Park Service officer in charge so as to prevent the creation of fire hazards, or conditions conducive to the development of infestation by timber-destroying insects.

(c) Prospectors or miners shall not open or construct roads or vehicle trails without first obtaining a permit from the Director of the National Park Service. Applications for such permits may be made through the officer in charge of the monument upon submitting a map or sketch showing the location of the mining property to be served and the location of the proposed road or vehicle trail. The permit may be conditioned upon the permittee maintaining the road or trail in a passable condition so long as it is used by the permittee or his successors.

(d) Occupation and use of the surface of an unpatented mining claim is restricted by the general law to such as is reasonably incident to the exploration, development and extraction of the minerals in the claim. Accordingly, any locator or patentee of a mining claim located under this act will be entitled to such right. Upon written permission of the Director of the National Park Service or his representative, the surface of such claim may be used for other specified purposes, the use to be on such conditions and for such period as may be prescribed when permission is granted.

(e) Prospectors and miners shall at all times conform to any rules prescribed or which may be made applicable by the Director of the National Park Service to the national monument.

(f) The Park regulations for the protection of wild life provide:

> The national monument is a sanctuary for wild life of every sort, and all hunting, or the killing, wounding, frightening, capturing or attempting to capture at any time of any wild bird or animal, except dangerous animals when it is necessary to prevent them from destroying human lives or inflicting personal injury, is prohibited.
>
> Firearms, traps, seines, and nets are prohibited within the boundaries of the monument, except upon written permission of the custodian or his representative.

(g) The right of occupation and use of the surface of the land embraced in the boundaries of a location, entry or patent pursuant to the act of June 22, 1936, will terminate when the minerals are mined out or the claim is abandoned. Any owner of an unpatented location who fails to perform annual assessment work on his claim for any assessment period will be assumed to have abandoned his claim and his right of occupation and use of the surface of the claim considered at an end.

(h) Applications for patents and final certificates issued thereon for mining claims in this monument should be noted "Glacier Bay National Monument Lands", and all patents issued for claims under the act will convey title to the minerals only, and contain appropriate reference to the act and the regulations issued thereunder.

(R.S. 2478; 43 U.S.C. 1201)

Subpart 3637—Lands Patented Under the Alaska Public Sale Act

§ 3637.1 Subject to mining location.

Lands segregated for classification or

sold under the Alaska Public Sale Act of August 30, 1949 (63 Stat. 679, 48 U.S.C. 364a–364e) are subject to mining location, under tne provision of section 3 of that act for the development of the reserved minerals under applicable law, including the United States mining laws, and subject to the rules and regulations of the Secretary of the Interior necessary to provide protection and compensation for damages from mining activities to the surface and improvements thereon. Such mining locations are subject to the applicable general regulations in Group 3400 and to the additional conditions and requirements in § 2241.5–2 of this chapter.

(63 Stat. 679, 48 U.S.C. 364a–364e)

§ 3637.2 Compensation to surface rights holder.

Any party who obtains the right, whether by license, permit, lease, or location, to prospect for, mine, or remove the minerals after the land shall have been segregated or disposed of under the act, will be required to compensate the holder of the surface rights for any damages that may be caused to the value of the land and to the tangible improvements thereon by such mining operations or prospecting, and may be required by an authorized officer, as to mining claims, or by the terms of the mineral license, permit or lease, to post a surety bond not to exceed $20,000 in amount to protect the surface owner against such damage, prior to the commencement of mining operations.

(Sec. 5, 63 Stat. 679; 48 U.S.C. 364e)

This circular replaces and supersedes Circulars 2089,2007, 1993, 1961, 1941, 1920, 1902, and 1870 and those portions of Circulars 2119, 2085, 2043, 1852, 1820, and 1754 relating to 43 CFR 259.1 and .2, 186.1 thru 186.26, 185.1 thru 185.137, 185.160 thru 185.186, 168.6 and .7, 101.15, 75.35(f), and 69.1, .2, .8, and .11.

GPO 843-193

22 2b.3-2 - amended by Circ. 2152

Circular No. 2150

Regulations pertaining to:

DESERT LAND ENTRY on the PUBLIC LANDS

As contained in Title 43 of the Code of Federal Regulations

U. S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

July 13, 1964

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TENURE MANAGEMENT (2000)

Group 2000—Land Tenure Management; General

PART 2220—GRANTS

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Subpart 2226—Desert Land Act

AUTHORITY: The provisions of this Subpart 2226 issued under R.S. 2478; 43 U.S.C. 1201, except as noted following sections affected.

§ 2226.0–1 Purpose.

(a) It is the purpose of the statutes governing desert-land entries to encourage and promote the reclamation, by irrigation, of the arid and semiarid public lands of the Western States through individual effort and private capital, it being assumed that settlement and occupation will naturally follow when the lands have thus been rendered more productive and habitable.

(b) Such reclamation is often a difficult and expensive undertaking, and desert-land entrymen sometimes find serious difficulty in complying with all the requirements of the law, particularly persons who possess little capital. All claimants should restrict their entries to only that quantity of land which they can reasonably expect to reclaim, even though such area be much less than may be lawfully entered. As the more accessible and easily appropriated streams become exhausted, it becomes necessary to convey water, often for very long distances, from more remote sources of supply, more elaborate and expensive systems of irrigation are required, the cost of water rights correspondingly increased, and individuals consequently find it necessary to unite their efforts in various forms of cooperative enterprise in order to secure the necessary capital. Nevertheless, a small tract of land, thoroughly reclaimed, with an adequate water supply obtained from a large, well-constructed irrigation system, may well be considered a very valuable piece of property, and more desirable than a larger tract only partially reclaimed or reclaimed from a small, private irrigation system less permanent and efficient in character.

§ 2226.0–3 Authority.

The act of March 3, 1877 (19 Stat. 377; 43 U.S.C. 321–323) as amended by the act of March 3, 1891 (26 Stat. 1096; 43 U.S.C. 321, 323, 325, 327–329), provides for the making of desert-land entries in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

§ 2226.0–5 Definitions.

(a) As used in the desert-land laws and the regulations of this subpart:

(1) "Reclamation" requires conducting water in adequate amounts and quality to the land so as to render it available for distribution when needed for irrigation and cultivation.

(2) "Cultivation" requires the operation, practice, or act of tillage or preparation of land for seed, and keeping the ground in a state favorable for the growth of crops.

(3) "Irrigation" requires the application of water to land for the purpose of growing crops.

(4) "Crop" includes any agricultural product to which the land under consideration is generally adapted and which would return a fair reward for the expense of producing it.

(5) "Water supply", to be adequate, must be sufficient to irrigate successfully and to reclaim all of the irrigable land embraced in an entry.

(6) "Water right" means the authority, whether by prior ownership, contract, purchase, or appropriation in accordance with state law, to use water on the land to be irrigated.

§ 2226.0–6 Who may make desert-land entry.

(a) *Citizenship.* (1) Any citizen of the United States 21 years of age, or any person of that age who has declared his intention of becoming a citizen of the United States, and who can truthfully make the statements specified in §§ 2226.0–7(d) and 2226.1–1(a) can make a desert-land entry. Thus, a woman, whether married or single, who possesses the necessary qualifications, can make a desert-land entry, and, if married, without taking into consideration any entries her husband may have made.

(2) The citizenship of a married woman must be shown, as required by § 1811.1–2 of this chapter.

(3) No assignments of desert-land enclaimants of alien birth must have been admitted to citizenship, but evidence of naturalization need not be furnished if it has already been filed in connection with the original declaration or with the proof of an assignment of the entry.

(b) *Second and additional entries.* A person's right of entry under the desert-land law is exhausted either by filing an allowable application and withdrawing it prior to its allowance or by making an entry or by taking an assignment of an entry, in whole or in part, except under the conditions described in subparagraphs (1) and (2) of this paragraph.

(1) Under the act of September 5, 1914 (38 Stat. 712; 43 U.S.C. 182), if a person, otherwise duly qualified to make a desert-land entry, has previously filed an allowable application, or made such entry or entries and through no fault of his own has lost, forfeited, or abandoned the same, such person may make another entry. In such case, however, it must be shown that the prior application, entry, or entries were made in good faith, and were lost, forfeited, or abandoned because of matters beyond the applicant's control, and that the applicant has not speculated in his right, nor committed a fraud or attempted fraud in connection with such prior entry or entries. As the assignment of an entry involves no loss,

forfeiture, or abandonment thereof, but carries a benefit to the assignor, it is held to exhaust his right of entry under the desert-land law. Hence, no person who has assigned such entry, in whole or in part, will be permitted to make another entry or to take one or any part thereof by assignment except where subparagraph (2) of this paragraph applies.

(2) The act of June 16 1955 (69 Stat. 138) authorizes any person who prior to June 16, 1955, made a valid desert-land entry on lands subject to the acts of June 22, 1910 (36 Stat. 583; 30 U.S.C. 33–85), or of July 17, 1914 (38 Stat. 509; 30 U.S.C. 121–123), if otherwise qualified to enter as a personal privilege not assignable, an additional tract of desert land, providing such additional tract shall not, together with the original entry, exceed 320 acres. Applicants and entrymen under the act of June 16, 1955, are subject to, and must comply with, all the regulations of this part, including the acreage limitations of § 2226.0–7(b).

§ 2226.0–7 Land subject to disposition.

(a) *Land that may be entered as desert land.* (1) As the desert-land law requires the artificial irrigation of any land entered thereunder, lands which are not susceptible of irrigation by practicable means are not deemed subject to entry as desert lands. The question as to whether any particular tract sought to be entered as desert land is in fact irrigable from the source proposed by the applicant will be investigated and determined before the application for entry is allowed. In order to be subject to entry under the desert-land law, public lands must be not only irrigable but also surveyed, unreserved, unappropriated, non-mineral (except lands withdrawn, classified, or valuable for coal, phosphate, nitrate, potash, sodium, sulphur, oil, gas or asphaltic minerals, which may be entered with a reservation of such mineral deposits, as explained in Subpart 2023, nontimbered, and such as will not, without artificial irrigation, produce any reasonably remunerative agricultural crop by the usual means or methods of cultivation. In this latter class are those lands which, one year with another for a series of years, will not without irrigation produce paying crops, but on which crops can be successfully grown in alternate years by means of the so-called dry-farming system. (37 L.D. 522 and 42 L.D. 524.)

(2) Applications to make desert-land entries of lands embraced in applications, permits, or leases under the act of February 25, 1920 (41 Stat. 437), if in all other respects complete, will be treated in accordance with §§ 2023.0–3 to 2023.0–7. Applications to make desert-land entries of lands within a naval petroleum reserve must be rejected, as no desert-land entry may be allowed for such lands.

(3) Land that has been effectually reclaimed is not subject to desert land entry.

(b) *Quantity of lands that may be entered.* An entry of lands under the act of March 3, 1877, is limited to 320 acres, subject to the following additional limitations:

(1) An entry of lands within an irrigation district which the Secretary of the Interior or his delegate has approved under the act of August 11, 1916 (39 Stat. 506; 43 U.S.C. 621–630), is limited to 160 acres.

(2) An entryman may have a desert-land entry for such a quantity of land as, taken together with all land acquired and claimed by him under the other agricultural land laws since August 30, 1890, does not exceed 320 acres in the aggregate, or 480 acres if he shall have made an enlarged homestead entry of 320 acres (acts of August 30, 1890; 26 Stat. 391; 43 U.S.C. 212; and of February 27, 1917; 39 Stat. 946; 43 U.S.C. 330).

(c) *Economic unit requirements, compactness.* (1) One or more tracts of public lands may be included in a desert land entry and the tracts so entered need not be contiguous. All the tracts entered, however, shall be sufficiently close to each other to be managed satisfactorily as an economic unit. In addition, the lands in the entry must be in as compact a form as possible taking into consideration the character of available public lands and the effect of allowance of the entry on the remaining public lands in the area.

(2) In determining whether an entry can be allowed in the form sought the authorized officer of the Bureau of Land Management will take into consideration such factors as the topography of the applied for and adjoining lands, the availability of public lands near the lands sought, the private lands farmed by the applicant, the farming systems and practices common to the locality and the character of the lands sought, and the practicability of farming the lands

as an economically feasible operating unit.

(3) In addition to the other requirements of the regulations in this part, applicants for desert land entry must submit with their applications information showing that the tracts applied for are sufficiently close to each other to be managed satisfactorily as an economic unit and that the lands in the application are as compact as possible in the circumstances.

(d) *Entries restricted to surveyed lands since March 28, 1908 as claims on unsurveyed lands.* (I) (i) Prior to the act of March 28, 1908 (35 Stat. 52; 43 U.S.C. 324, 326, 333), a desert-land entry could embrace unsurveyed lands, but since the date of that act desert-land entries may not be made of unsurveyed lands. This act provides, however, that any individual qualified to make entry of desert lands under the desert land acts who has, prior to survey, taken possession of a tract of unsurveyed desert land not exceeding in area 320 acres in compact form, and has reclaimed or has in good faith commenced the work of reclaiming the same, shall have the preference right to make entry of such tract under said acts, in conformity with the public-land surveys, within 90 days after the filing of the approved plat of survey in the land office.

(ii) Unsurveyed public land withdrawn by Executive Orders Nos. 6910 and 6964 of November 26, 1934, and February 5, 1935, respectively, is not subject to appropriation, under the desert-land laws, until such appropriation has been authorized by classification. (See Subpart 2411.)

(2) To preserve this preference right the work of reclamation must be continued up to the filing of the plat of survey, unless the reclamation of the land is completed before that time, and in that event the claimant must continue to cultivate and occupy the land until the survey is completed and the plat filed. A mere perfunctory occupation of the land, such as staking off the claim or posting notices thereof on the land claimed, will not secure the preference right as against an adverse claimant. While actual settlement and residence upon the land, as required under the homestead law, are not necessary, the possession and improvements must be such as to conform to the requirements of the desert land law and must evidence good faith on the part of the claimant.

§ 2226.1 Procedures.

§ 2226.1–1 Petitions and applications.

(a) *Filing and fees.* (1) A person who desires to enter public lands under the desert land laws must file an application together with a petition on forms approved by the Director, properly executed. However, if the lands described in the application have been already classified and opened for disposition under the desert land laws, no petition is required. The documents must be filed in the proper land office in the State, except that petitions for lands in North Dakota or South Dakota must be filed in the land office at Billings, Montana.

(2) All applications must be accompanied by an application service fee of $16 which is not returnable, and the payment of 25 cents per acre for the lands therein described as required by law.

(b) *Post-office addresses of applicants and witnesses.* Applicants and witnesses must in all cases state their places of actual residence, their business or occupation, and their post-office addresses. It is not sufficient to name only the county or State in which a person lives, but the town or city must be named also; and where the residence is in a city the street and number must be given. It is especially important to claimants that upon changing their post-office addresses they promptly notify the manager of such change, for in case of failure to do so their entries may be canceled upon notice sent to the address of record but not received by them.

(c) *Execution of applications and proofs; time for filing of applications.* (1) Applications and proofs, except final proofs required by R.S. 2294 (43 U.S.C. 254), must be signed by the applicants but need not be under oath. Final proofs may be executed before any officer authorized to administer oaths in public land cases, as explained by § 1821.3–2 of this chapter.

(2) An application to make desert-land entry is not acceptable if dated more than 10 days before its filing at the land office.

(d) *Evidence of water rights required with application.* No desert-land application will be allowed unless accompanied by evidence satisfactorily showing either that the intending entryman has

already acquired by appropriation, purchase, or contract a right to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought, or that he has initiated and prosecuted, as far as then possible, appropriate steps looking to the acquisition of such a right, or, in States where no permit or right to appropriate water is granted until the land embraced within the application is classified as suitable for desert-land entry or the entry is allowed, a showing that the applicant is otherwise qualified under State law to secure such permit or right. If applicant intends to procure water from an irrigation district, corporation, or association, but is unable to obtain a contract for the water in advance of the allowance of his entry, then he must furnish, in lieu of the contract, some written assurance from the responsible officials of such district, corporation, or association that, if his entry be allowed, applicant will be able to obtain from that source the necessary water. The manager will examine the evidence submitted in such applications and either reject defective applications or require additional evidence.

§ 2226.1–2 Assignment.

(a) *Lands which may be assigned.* While by the act of March 3, 1891 (26 Stat. 1096; 43 U.S.C. 329), assignments of desert-land entries were recognized, the Department of the Interior, largely for administrative reasons, held that a desert-land entry might be assigned as a whole or in its entirety, but refused to recognize the assignment of only a portion of an entry. The act of March 28, 1908, however, provides for an assignment of such entries, in whole or in part, but this does not mean that less than a legal subdivision may be assigned. Therefore no assignment, otherwise than by legal subdivisions, will be recognized. The legal subdivisions assigned must be contiguous.

CROSS REFERENCE: For assignment of desert-land entries within Government reclamation projects, see § 2226.4–5(a).

(b) *Qualifications of assignees.* (1) The act of March 28, 1908, also provides that no person may take a desert-land entry by assignment unless he is qualified to enter the tract so assigned to him. Therefore, if a person is not at least 21 years of age and, excepting Nevada, a resident citizen of the State wherein the land involved is located; or if he is not a citizen of the United States, or a person who has declared his intention to become a citizen thereof; or, if he has made a desert-land entry in his own right and is not entitled under § 2226.0–6 to make a second or an additional entry, he cannot take such an entry by assignment. The language of the act indicates that the taking of an entry by assignment is equivalent to the making of an entry, and this being so, no person is allowed to take more than one entry by assignment, unless it be done as the exercise of a right of second or additional entry.

(2) A person who has the right to make a second or additional desert-land entry may exercise that right by taking an assignment of a desert-land entry, or part of such entry, if he is otherwise qualified to make a desert-land entry for the particular tract assigned.

(3) The act of March 28, 1908, also provides that no assignment to or for the benefit of any corporation shall be authorized or recognized.

(c) *Showing required of assignees; recognition of assignments.* (1) As evidence of the assignment there should be transmitted to the manager the original deed of assignment or a certified copy thereof. Where the deed of assignment is recorded a certified copy may be made by the officer who has custody of the record. Where the original deed is presented to an officer qualified to take proof in desert-land cases, a copy certified by such officer will be accepted.

(2) An assignee must file with his deed of assignment, a statement on a form approved by the Director, showing his qualifications to take the entry assigned to him. He must show what applications or entries, if any, have been made by him or what entries assigned to him under the agricultural public land laws, and he must also show his qualifications as a citizen of the United States; that he is 21 years of age or over; and also that he is a resident citizen of the State in which the land assigned to him is situated, except in the State of Nevada, where citizenship of the United States only is required. If the assignee is not a native-born citizen of the United States, he should also furnish a statement as to his citizenship status in accordance with Subpart 1811 of this chapter. If the assignee is a woman, she

should in all cases state whether she is married, and if so, she must make the showing required by Subpart 1811 of this chapter. Desert-land entries are initiated by the payment of 25 cents per acre, and no assignable right is acquired by the applicant prior to such payment. (6 L.D. 541, 33 L.D. 152.) An assignment made on the day of such payment, or soon thereafter, is treated as suggesting fraud, and such cases will be carefully scrutinized. The provisions of law authorizing the assignment of desert entries, in whole or in part, furnish no authority to a claimant under said law to make an executory contract to convey the land after the issuance of patent and thereafter to proceed with the submission of final proof in furtherance of such contract. (34 L.D. 383.) The sale of land embraced in an entry at any time before final payment is made must be regarded as an assignment of the entry, and in such cases the person buying the land must show that he possesses all the qualifications required of an assignee. (29 L.D. 453.) The assignor of a desert-land entry may execute the assignment before any officer authorized to take acknowledgements of deeds. The assignee must furnish a statement on a form approved by the Director as to his qualifications.

(3) No assignments of desert-land entries or parts of entries are conclusive until examined in the land office and found satisfactory and the assignment recognized. When recognized, however, the assignee takes the place of the assignor as effectively as though he had made the entry, and is subject to any requirement that may be made relative thereto. The assignment of a desert-land entry to one disqualified to acquire title under the desert-land law, and to whom, therefore, recognition of the assignment is refused by the manager, does not of itself render the entry fraudulent, but leaves the right thereto in the assignor. In such connection, however, see 42 L.D. 90 and 48 L.D. 519.

(4) All applications for recognition of assignment of desert-land entries must be accompanied by an application service fee of $10 which will not be returnable.

§ 2226.1–3 When lands may be sold, taxed, or mortgaged.

(a) After final proof and payment have been made the land may be sold and conveyed to another person without the approval of the Bureau of Land Management, but all such conveyances are nevertheless subject to the superior rights of the United States, and the title so contained would fall if it should be finally determined that the entry was illegal or that the entryman had failed to comply with the law.

(b) Lands embraced in unperfected desert-land entries are not subject to taxation by the State authorities, nor to levy and sale under execution to satisfy judgments against the entrymen, except as hereinafter set forth in this section.

(c) Lands embraced in desert-land entries within an irrigation district which the Secretary of the Interior has approved under the act of August 11, 1916 (39 Stat. 506; 43 U.S.C. 621–630), may be taxed and otherwise dealt with as provided by said act, and lands in desert-land entries within irrigation projects constructed under the Reclamation Act may be taxed as provided for by the act of June 13, 1930 (46 Stat. 581; 43 U.S.C. 455, 455a–455c).

(d) A desert-land entryman may, however, mortgage his interest in the entered land if, by the laws of the State in which the land is situated, a mortgage of land is regarded as merely creating a lien thereon and not as a conveyance thereof. The purchaser at a sale had for the foreclosure of such mortgage may be recognized as assignee upon furnishing proof of his qualifications to take a desert-land entry by assignment. Transferees, after final proof, mortgagees, or other encumbrances may file in the proper land office written notice stating the nature of their claims, and they will thereupon become entitled to receive notice of any action taken by the Bureau of Land Management with reference to the entry.

(e) The filing of all notices of recordation of claim by transferred, mortgages, or other encumbrancer under this section must be accompanied by a service charge of $10 which will not be returnable.

§ 2226.1–4 Annual proof.

(a) *Showing required.* (1) In order to test the sincerity and good faith of claimants under the desert-land laws and to prevent the segregation for a number of years of public lands in the interest of

persons who have no intention to reclaim them, Congress, in the act of March 3, 1891 (26 Stat. 1096; 43 U.S.C. 327, 328) made the requirement that a map be filed at the initiation of the entry showing the mode of contemplated irrigation and the proposed source of water supply, and that there be expended yearly for 3 years from the date of the entry not less than $1 for each acre of the tract entered, making a total of not less than $3 per acre, in the necessary irrigation, reclamation, and cultivation of the land, in permanent improvements thereon, and in the purchase of water rights for the irrigation thereof, and that at the expiration of the third year a map or plan be filed showing the character and extent of the improvements placed on the claim. Said act, however, authorizes the submission of final proof at an earlier date than 4 years from the time the entry is made in cases wherein reclamation has been effected and expenditures of not less than $3 per acre have been made.

(2) Yearly or annual proof of expenditures must consist of the statements of "two or more credible witnesses," each of whom must have general knowledge that the expenditures were made for the purpose stated in the proof. Annual proofs must contain itemized statements showing the manner in which expenditures were made.

(b) *Acceptable expenditures.* (1) Expenditures for the construction and maintenance of storage reservoirs, dams, canals, ditches, and laterals to be used by claimant for irrigating his land; for roads where they are necessary; for erecting stables, corrals, etc.; for digging wells, where the water therefrom is to be used for irrigating the land; for stock or interest in an approved irrigation company, or for taxes paid to an approved irrigation district through which water is to be secured to irrigate the land; and for leveling and bordering land proposed to be irrigated, will be accepted. Expenditures for fencing all or a portion of the claim, for surveying for the purpose of ascertaining the levels for canals, ditches, etc., and for the first breaking or clearing of the soil are also acceptable.

(2) The value to be attached to, and the credit to be given for, an expenditure for works or improvements is the reasonable value of the work done or improvement placed upon the land, according to the market price therefor, or for similar work or improvements prevailing in the vicinity, and not the amount alleged by a claimant to have been expended nor the mere proof of expenditures, as exhibited by checks or other vouchers. (Bradley v. Vasold, 36 L.D. 106.)

(c) *Expenditures not acceptable.* (1) Expenditures for cultivation after the soil has been first prepared may not be accepted, because the claimant is supposed to be compensated for such work by the crops to be reaped as a result of cultivation. Expenditures for surveying the claim in order to locate the corners of same may not be accepted. The cost of tools, implements, wagons, and repairs to same, used in construction work, may not be computed in cost of construction. Expenditures for material of any kind will not be allowed unless such material has actually been installed or employed in and for the purpose for which it was purchased. For instance, if credit is asked for posts and wire for fences or for pump or other well machinery, it must be shown that the fence has been actually constructed or the well machinery actually put in place. No expenditures can be credited on annual proofs upon a desert-land entry unless made on account of that particular entry, and expenditures once credited can not be again applied. This rule applies to second entries as well as to original entries, and a claimant who relinquishes his entry and makes second entry of the same land under the act of September 5, 1914, cannot receive credit on annual proofs upon the second entry for expenditures made on account of the former entry. (41 L.D. 601 and 42 L.D. 523.)

(2) Expenditures for the clearing of the land will not receive credit in cases where the vegetation or brush claimed to have been cleared away has not been actually removed by the roots. Therefore, expenditures for clearing, where as a matter of fact there has been only crushing, or rollling, or what is known in some localities as railing the land will not be accepted.

(3) No expenditures for stock or interest in an irrigation company, through which water is to be secured for irrigating the land, will be accepted as satisfactory annual expenditure until a field examiner, or other authorized officer, has submitted a report as to the resources and reliability of the company, including

its actual water right, and such report has been favorably acted upon by the Bureau of Land Management. The stock purchased must carry the right to water, and it must be shown that payment in cash has been made at least to the extent of the amount claimed as expenditure for the purchase of such stock in connection with the annual proof submitted, and such stock must be actually owned by the claimants at the time of the submission of final proof.

(d) *Procedure where proof is not made when due.* Managers will examine their records frequently for the purpose of ascertaining whether all annual proofs due on pending desert-land entries have been made, and in every case where the claimant is in default in that respect they will send him notice and allow him 60 days in which to submit such proof. If the proof is not furnished as required the entry will be canceled. During the pendency of a Government proceeding initiated by such notice the entry will be protected against a private contest charging failure to make the required expenditures, and such contest will neither defeat the claimant's right to equitably perfect the entry as to the matter of expenditures during the 60 days allowed in the notice nor secure to the contestant a preference right in event the entry be canceled for default under said notice.

(e) *Desert land entry in more than one district.* When a desert-land entry embraces land in more than one district, the required annual proofs may be filed in either district, provided proper reference is made to the portion of the entry in the adjoining district, and the entryman must notify the manager of the adjoining district by letter of the date when the annual proof is filed.

(f) *Extensions of time.* (1) The law makes no provision for extensions of time in which to file annual proof becoming due subsequent to December 31, 1936, on desert-land entries not embraced within the exterior boundaries of any withdrawal or irrigation project under the Reclamation Act of June 17, 1902 (32 Stat. 388), and extensions for said purpose cannot therefore be granted. However, where a township is suspended from entry for the purpose of resurvey thereof the time between the date of suspension and the filing in the local office of the new plat of survey will be excluded from the period accorded by law for the reclamation of land under a desert entry within such township and the statutory life of the entry extended accordingly (40 L.D. 223). During the continuance of the extension the claimant may, at his option, defer the making of annual expenditures and proof thereof.

(2) Extensions of time for making desert-land proofs were authorized by the acts of June 16, 1933 (48 Stat. 274; 43 U.S.C. 256a), July 26, 1935 (49 Stat. 504; 43 U.S.C. 256a), and June 16, 1937 (50 Stat. 303; 43 U.S.C. 256a). Such acts affect only proofs becoming due on or before December 31, 1936. For that reason, the regulations which were issued thereunder have not been included in this chapter.

(g) *Submission of proof before due date.* Nothing in the statutes or regulations should be construed to mean that the entryman must wait until the end of the year to submit his annual proof because the proof may be properly submitted as soon as the expenditures have been made. Proof sufficient for the 3 years may be offered whenever the amount of $3 an acre has been expended in reclaiming and improving the land, and thereafter annual proof will not be required.

§ 2226.1–5 Final proof.

(a) *General requirements.* The entryman, his assigns, or, in case of death, his heirs or devisees, are allowed 4 years from date of the entry within which to comply with the requirements of the law as to reclamation and cultivation of the land and to submit final proof, but final proof may be made and patent thereon issued as soon as there has been expended the sum of $3 per acre in improving, reclaiming, and irrigating the land, and one-eighth of the entire area entered has been properly cultivated and irrigated, and when the requirements of the desert-land laws as to water rights and the construction of the necessary reservoirs, ditches, dams, etc., have been fully complied with.

(1) Where the proof establishes that the entryman cannot effect timely compliance with the law, the entry must be canceled unless statutory authority permits the granting of an extension of time or other relief.

(b) *Notice of intention to make final proof.* When an entryman has reclaimed the land and is ready to make final proof, he should apply to the manager for a notice of intention to make such proof. This notice must contain a complete description of the land, give the number of

the entry and name of the claimant, and must bear an endorsement specifically indicating the source of his water supply. If the proof is made by an assignee, his name, as well as that of the original entryman, should be stated. It must also show when, where and before whom the proof is to be made. Four witnesses may be named in this notice, two of whom must be used in making proof. Care should be exercised to select as witnesses persons who are familiar, from personal observation, with the land in question, and with what has been done by the claimant toward reclaiming and improving it. Care should also be taken to ascertain definitely the names and addresses of the proposed witnesses, so that they may correctly appear in the notice.

(c) *Publication of final-proof notice.* The manager will issue the usual notice for publication. This notice must be published once a week for five successive weeks in a newspaper of established character and general circulation published nearest the lands (see 38 L.D. 131; 43 L.D. 216). The claimant must pay the cost of the publication but it is the duty of managers to procure the publication of proper final-proof notices. The date fixed for the taking of the proof must be at least 30 days after the date of first publication. Proof of publication must be made by the statement of the publisher of the newspaper or by someone authorized to act for him.

(d) *Submission of final proof.* On the day set in the notice (or, in the case of accident or unavoidable delay, within 10 days thereafter), and at the place and before the officer designated, the claimant will appear with two of the witnesses named in the notice and make proof of the reclamation, cultivation, and improvement of the land. The testimony of each claimant should be taken separately and apart from and not within the hearing of either of his witnesses, and the testimony of each witness should be taken separately and apart from and not within the hearing of either the applicant or of any other witness, and both the applicant and each of the witnesses should be required to state, in and as a part of the final-proof testimony given by them, that they have given such testimony without any actual knowledge of any statement made in the testimony of either of the others. In every instance where, for any reason whatever, final proof is not submitted within the 4 years prescribed by law, or within the period of an extension granted for submitting such proof, a statement should be filed by claimant, with the proof, explaining the cause of delay.

The final proof may be made before any officer authorized to administer oaths in public land cases, as explained in § 1821.3–2 of this chapter.

(e) *Showing as to irrigation system.* The final proof must show specifically the source and volume of the water supply and how it was acquired and how it is maintained. The number, length, and carrying capacity of all ditches to and on each of the legal subdivisions must also be shown. The claimant and the witnesses must each state in full all that has been done in the matter of reclamation and improvements of the land, and must answer fully, of their own personal knowledge, all of the questions contained in the final-proof blanks. They must state plainly whether at any time they saw the land effectually irrigated, and the different dates on which they saw it irrigated should be specifically stated.

(f) *Showing as to lands irrigated and reclaimed.* While it is not required that all of the land shall have been actually irrigated at the time final proof is made, it is necessary that the one-eighth portion which is required to be cultivated shall also have been irrigated in a manner calculated to produce profitable results, considering the character of the land, the climate, and the kind of crops being grown. (Alonzo B. Cole, 38 L.D. 420.) The cultivation and irrigation of the one-eighth portion of the entire area entered may be had in a body on one legal subdivision or may be distributed over several subdivisions. The final proof must clearly show that all of the permanent main and lateral ditches necessary for the irrigation of all the irrigable land in the entry have been constructed so that water can be actually applied to the land as soon as it is ready for cultivation. If pumping be relied upon as the means of irrigation, the plant installed for that purpose must be of sufficient capacity to render available enough water for all the irrigable land. If there are any high points or any portions of the land which for any reason it is not practicable to irrigate, the nature, extent, and situation of such areas

in each legal subdivision must be fully stated. If less than one-eighth of a smallest legal subdivision is practically susceptible of irrigation from claimant's source of water supply and no portion thereof is used as a necessary part of his irrigation scheme, such subdivision must be relinquished. (43 L.D. 269.)

(g) *Showing as to tillage of land.* As a rule, actual tillage of one-eighth of the land must be shown. It is not sufficient to show only that there has been a marked increase in the growth of grass or that grass sufficient to support stock has been produced on the land as a result of irrigation. If, however, on account of some peculiar climatic or soil conditions, no crops except grass can be successfully produced, or if actual tillage will destroy or injure the productive quality of the soil, the actual production of a crop of hay of merchantable value will be accepted as sufficient compliance with the requirements as to cultivation. (32 L.D. 456.) In such cases, however, the facts must be stated and the extent and value of the crop of hay must be shown, and, as before stated, that same was produced as a result of actual irrigation.

(h) *Showing as to water right.* (1) In every case where the claimant's water right is founded upon contract or purchase the final proof must embrace evidence which clearly establishes the fact and legal sufficiency of that right. If claimant's ownership of such right has already been evidenced in connection with the original entry or some later proceeding, then the final proof must show his continued possession thereof. If the water right relied on is obtained under claimant's appropriation, the final proof, considered together with any evidence previously submitted in the matter, must show that the claimant has made such preliminary filings as are required by the laws of the State in which the land is located, and that he has also taken all other steps necessary under said laws to secure and perfect the claimed water right. In all cases the water right, however it be acquired, must entitle the claimant to the use of a sufficient supply of water to irrigate successfully all the irrigable land embraced in his entry, notwithstanding that the final proof need only show the actual irrigation of one-eighth of that area.

(2) In those States where entrymen have made applications for water rights and have been granted permits but where no final adjudication of the water right can be secured from the State authorities owing to delay in the adjudication of the watercourses or other delay for which the entrymen are in no way responsible, proof that the entrymen have done all that is required of them by the laws of the State, together with proof of actual irrigation of one-eighth of the land embraced in their entries, may be accepted. This modification of the rule that the claimant must furnish evidence of an absolute water right will apply only in those States where under the local laws it is impossible for the entryman to secure final evidence of title to his water right within the time allowed him to submit final proof on his entry, and in such cases the best evidence obtainable must be furnished. (35 L.D. 305.)

(3) It is a well-settled principle of law in all of the States in which the desert land acts are operative that actual application to a beneficial use of water appropriated from public streams measures the extent of the right to the water, and that failure to proceed with reasonable diligence to make such application to beneficial use within a reasonable time constitutes an abandonment of the right. (Wiel's Water Rights in the Western States, sec. 172.) The final proof, therefore, must show that the claimant has exercised such diligence as will, if continued, under the operation of this rule result in his definitely securing a perfect right to the use of sufficient water for the permanent irrigation and reclamation of all of the irrigable land in his entry. To this end the proof must at least show that water which is being diverted from its natural course and claimed for the specific purpose of irrigating the lands embraced in claimant's entry, under a legal right acquired by virtue of his own or his grantor's compliance with the requirements of the State laws governing the appropriation of public waters, has actually been conducted through claimant's main ditches to and upon the land; that one-eighth of the land embraced in the entry has been actually irrigated and cultivated; that water has been brought to such a point on the land as to readily demonstrate that the entire irrigable area may be irrigated from the system; and that

claimant is prepared to distribute the water so claimed over all of the irrigable land in each smallest legal subdivision in quantity sufficient for practical irrigation as soon as the land shall have been cleared or otherwise prepared for cultivation. The nature of the work necessary to be performed in and for the preparation for cultivation of such part of the land as has not been irrigated should be carefully indicated, and it should be shown that the said work of preparation is being prosecuted with such diligence as will permit of beneficial application of appropriated water within a reasonable time.

(4) Desert-land claimants should bear in mind that a water right and a water supply are not the same thing and that the two are not always or necessarily found together. Strictly speaking, a perfect and complete water right for irrigation purposes is confined to and limited by the area of land that has been irrigated with the water provided thereunder. Under the various State laws, however, an inchoate or incomplete right may be obtained which is capable of ripening into a perfect right if the water is applied to beneficial use with reasonable diligence. A person may have an apparent right of this kind for land which he has not irrigated, and which, moreover, he never can irrigate because of the lack of available water to satisfy his apparent right. Such an imperfect right, of course, cannot be viewed as meeting the requirements of the desert-land law which contemplates the eventual reclamation of all the irrigable land in the entry. Therefore, and with special reference to that portion of the irrigable land of an entry not required to be irrigated and cultivated before final proof, an incomplete (though real) water right will not be acceptable if its completion appears to be impossible because there is no actual supply of water available under the appropriation in question.

(i) *Showing where water supply is derived from irrigation project.* (1) Where the water right claimed in any final proof is derived from an irrigation project it must be shown that the entryman owns such an interest therein as entitles him to receive from the irrigation works of the project a supply of water sufficient for the proper irrigation of the land embraced in his entry. Investigations by field examiners as to the resources and reliability, including particularly the source and volume of the water supply, of all irrigation companies, associations, and districts through which desert-land entrymen seek to acquire water rights for the reclamation of their lands are made, and it is the purpose of the Bureau of Land Management to accept no annual or final proofs based upon such a water right until an investigation of the company in question has been made and report thereon approved. The information so acquired will be regarded as determining, at least tentatively, the amount of stock or interest which is necessary to give the entryman a right to a sufficient supply of water; but the entryman will be permitted to challenge the correctness of the report as to the facts alleged and the validity of its conclusions and to offer either with his final proof or subsequently such evidence as he can tending to support his contentions.

(2) Entrymen applying to make final proof are required to state the source of their water supply, and if water is to be obtained from the works of an irrigation company, association, or district the manager will endorse the name and address of the project upon the copy of the notice to be forwarded to the area administrator. If the report on the company has been acted upon by the Bureau of Land Management and the proof submitted by claimant does not show that he owns the amount of stock or interest in the company found necessary for the area of land to be reclaimed, the manager will suspend the proof, advise the claimant of the requirements made by the Bureau of Land Management in connection with the report, and allow him 30 days within which to comply therewith or to make an affirmative showing in duplicate and apply for a hearing. In default of any action by him within the specified time the manager will reject the proof, subject to the usual right of appeal.

(j) *Final-proof expiration notice.* (1) Where final proof is not made within the period of 4 years, or within the period for which an extension of time has been granted, the claimant will be allowed 90 days in which to submit final proof. (44 L.D. 364.)

(2) Should no action be taken within the time allowed, the entry will be canceled. The 90 days provided for in this

section must not be construed as an extension of time or as relieving the claimant from the necessity of explaining why the proof was not made within the statutory period or within such extensions of that period as have been specifically granted.

(k) *Requirements where township is suspended for resurvey.* No claimant will be required to submit final proof while the township embracing his entry is under suspension for the purpose of resurvey. (40 L.D. 223.) This also applies to annual proof. In computing the time when final proof on an entry so affected will become due the period between the date of suspension and the filing in the local office of the new plat of survey will be excluded. However, if the claimant so elects, he may submit final proof on such entry notwithstanding the suspension of the township.

§ 2226.1–6 Amendments.

(a) *To enlarge area of desert-land entry.* Amendment for the purpose of enlarging the area of a desert-land entry will be granted under and in the conditions and circumstances now to be stated.

(1) In any case where it is satisfactorily disclosed that entry was not made to embrace the full area which might lawfully have been included therein because of existing appropriations of all contiguous lands then appearing to be susceptible of irrigation through and by means of entryman's water supply, or of all such lands which seemed to be worthy of the expenditure requisite for that purpose, said lands having since been released from such appropriations.

(2) Where contiguous tracts have been omitted from entry because of entryman's belief, after a reasonably careful investigation, that they could not be reclaimed by means of the water supply available for use in that behalf, it having been subsequently discovered that reclamation thereof can be effectively accomplished by means of a changed plan or method of conserving or distributing such water supply.

(3) Where, at the time of entry, the entryman announced, in his declaration, his purpose to procure the cancellation, through contest or relinquishment, of an entry embracing lands contiguous to those entered by him, and thereafter to seek amendment of his entry in such manner as to embrace all or some portion of the lands so discharged from entry.

(b) *Conditions governing amendments in exercise of equitable powers; amendments involving homestead and desert-land entries of adjoining lands.* Applications for amendment presented pursuant to § 1821.6–5(a) of this chapter will not be granted, except where at least one legal subdivision of the lands originally entered is retained in the amended entry, and any such application must be submitted within 1 year next after discovery by the entryman of the existence of the conditions relied upon as entitling him to the relief he seeks, or within 1 year succeeding the date on which, by the exercise of reasonable diligence, the existence of such conditions might have been discovered: *Provided, nevertheless,* That where an applicant for amendment has made both homestead and desert land entries for contiguous lands, amendment may be granted whereby to transfer the desert-land entry, in its entirety, to the land covered by the homestead entry, and the homestead entry, in its entirety, to the land covered by the desert-land entry, or whereby to enlarge the desert-land entry in such manner as that it will include the whole or some portion of the lands embraced in the homestead entry, sufficient equitable reason for such enlargement being exhibited, and the area of the enlarged entry in no case exceeding 320 acres. Applications for such amendments may be made under §§ 1821.6–1 to 1821.6–7 of this chapter and on the prescribed form, in so far as the same are applicable. A supplemental statement should also be furnished, if necessary, to show the facts.

(c) *Evidence of water-right to accompany application to amend desert-land entry.* Application to amend desert-land entries by the addition of a new and enlarged area or by transferring the entry to lands not originally selected for entry must be accompanied by evidence of applicant's right to the use of water sufficient for the adequate irrigation of said enlarged area or of the lands to which entry is to be transferred. Such evidence must be in the form prescribed by § 2226.1–1 (d) and (e).

§ 2226.1–7 Contests.

(a) Contests may be initiated by any person seeking to acquire title to or claiming an interest in the land involved against a party to any desert-land entry

because of priority of claim or for any sufficient cause affecting the legality or validity of the claim not shown by the records of the Bureau of Land Management.

(b) Successful contestants will be allowed a preference right of entry for 30 days after notice of the cancellation of the contested entry, in the same manner as in homestead cases, and the manager will give the same notice and is entitled to the same fee for notice as in other cases.

CROSS REFERENCE: For provisions under Appeals and Hearings see Parts 1840 and 1850 of this chapter.

§ 2226.1–8 Relinquishments.

A desert-land entry may be relinquished at any time by the party owning the same. Conditional relinquishments will not be accepted.

CROSS REFERENCE: For relinquishments, in general, see Subpart 1825 of this chapter.

§ 2226.2 Extensions of time to make final proof.

§ 2226.2–1 General acts authorizing extensions of time.

(a) There are five general acts of Congress which authorize the allowance, under certain conditions, of an extension of time for the submission of final proof by a desert-land claimant. Said acts are the following: June 27, 1906 (Sec. 5, 34 Stat. 520; 43 U.S.C. 448); March 28, 1908 (Sec. 3, 35 Stat. 52; 43 U.S.C. 333); April 30, 1912 (37 Stat. 106; 43 U.S.C. 334); March 4, 1915 (Sec. 5, 38 Stat. 1161, 43 U.S.C. 335); and February 25, 1925 (43 Stat. 982; 43 U.S.C. 336). The act of June 27, 1906, is applicable only to entries embraced within the exterior limits of some withdrawal or irrigation project under the Reclamation Act of June 17, 1902 (32 Stat. 388). The act of March 4, 1915, is applicable only to entries made prior to March 4, 1915; and while authorizing in certain cases an additional extension to claimants who have had one or more extensions under previous laws, this act denies any extension under its terms to claimants who can obtain such benefit under prior acts.

(b) In addition to the acts cited in this section, extensions of time for making desert-land proofs were authorized by the acts of June 16, 1933 (48 Stat. 274; 43 U.S.C. 256a), July 26, 1935 (49 Stat. 504; 43 U.S.C. 256a), and June 16, 1937 (50 Stat. 303; 43 U.S.C. 256a). Such acts affect only proofs becoming due on or before December 31, 1936. For that reason, the regulations which were issued thereunder have not been included in this chapter.

§ 2226.2–2 Procedure on applications for extensions of time, where contest is pending.

(a) A pending contest against a desert-land entry will not prevent the allowance of an application for extension of time, where the contest affidavit does not charge facts tending to overcome the prima facie showing of right to such extension. (41 L.D. 603.)

(b) Consideration of an application for extension of time will not be deferred because of the pendency of a contest against the entry in question unless the contest charges be sufficient, if proven, to negative the right of the entryman to an extension of time for making final proof. If the contest charges be insufficient, the application for extension, where regular in all respects, will be allowed and the contest dismissed subject to the right of appeal, but without prejudice to the contestant's right to amend his charges.

§ 2226.2–3 Act of March 28, 1908.

Under the provisions of the act of March 28, 1908 (35 Stat. 52; 43 U.S.C. 333), the period of 4 years may be extended, in the discretion of the authorized officer, for an additional period not exceeding 3 years, if, by reason of some unavoidable delay in the construction of the irrigating works intended to convey water to the land, the entryman is unable to make proof of reclamation and cultivation required within the 4 years. This does not mean that the period within which proof may be made will be extended as a matter of course for 3 years. Applications for extension under said act will not be granted unless it be clearly shown that the failure to reclaim and cultivate the land within the regular period of 4 years was due to no fault on the part of the entryman but to some unavoidable delay in the construction of the irrigation works for which he was not responsible and could not have readily foreseen. (37 L.D. 332.) It must also appear that he has complied with the law as to annual expenditures and proof thereof.

§ 2226.2–4 **Act of April 30, 1912.**

(a) Under the provisions of the act of April 30, 1912 (37 Stat. 106; 43 U.S.C. 334), a further extension of time may be granted for submitting final proof, not exceeding 3 years, where it is shown that, because of some unavoidable delay in the construction of irrigation works intended to convey water to the land embraced in his entry, the claimant is, without fault on his part, unable to make proof of the reclamation and cultivation of said lands within the time limited therefor, but such further extension cannot be granted for a period of more than 3 years nor affect contests initiated for a valid existing reason.

(b) An entryman who has complied with the law as to annual expenditures and proof thereof and who desires to make application for extension of time under the provisions of the act of March 28, 1908, should file with the manager a statement setting forth fully the facts, showing how and why he has been prevented from making final proof of reclamation and cultivation within the regular period. This statement must be corroborated by two witnesses who have personal knowledge of the facts.

§ 2226.2–5 **Act of February 25, 1925.**

Applications for further extension of time under the act of April 30, 1912, and February 25, 1925 (43 Stat. 982; 43 U.S.C. 336), may be made in the same manner, and the same procedure will be followed with respect to such applications as under the act of March 28, 1908, and the act of March 4, 1915 (38 Stat. 1161; 43 U.S.C. 335), as amended.

§ 2226.2–6 **Service fees.**

All applications for extension of time made under the acts of March 28, 1908, April 30, 1912, or February 25, 1925, must be accompanied by an application service fee of $10 which will not be returnable.

§ 2226.2–7 **Act of March 4, 1915.**

(a) *General statement.* The last three paragraphs of section 5 of the act of Congress approved March 4, 1915 (38 Stat. 1161), entitled "An act making appropriations to supply deficiencies in appropriations for the fiscal year 1915 and for prior years, and for other purposes," as amended by the act of March 21, 1918 (40 Stat. 458; 43 U.S.C. 335, 337, 338), authorize the Secretary of the Interior, under rules and regulations to be prescribed by him, to grant relief to certain classes of desert-land claimants. This law provides that upon certain conditions such an entryman, or his duly qualified assignee, may obtain an extension of time, not exceeding 3 years from date of its allowance, in which to submit final proof, or that upon certain other conditions he may either complete his entry in the manner required of a homestead claimant or purchase the land on special terms.

(b) *Applications for relief.* (1) All applications for the benefits of section 5 of the act of March 4, 1915, as amended, should be filed prior to the expiration of the time within which the applicant would otherwise be required to make final proof on his desert-land entry in the land office for the district in which the entered lands are situated. They must be supported by the statement of the applicant, corroborated by two witnesses, as to the material facts necessary to be shown.

(2) All such applications should contain the name of the entryman and the date of the entry, and, if the entry has been assigned, the name of the assignee and date of the assignment; the description of the land involved; a statement of the various sums of money expended by the applicant or his grantors in an endeavor to reclaim the land, and the particular purpose for which each sum was expended; the facts by reason of which it has been impossible for claimant to effect reclamation and cultivation and to submit final proof within the usual period, or such extensions thereof as may have been granted; and the facts by reason of which the applicant considers that there is or is not, as the case may be, a reasonable prospect that if an extension of time is granted him, he will be able to secure a sufficient water supply and make final proof of reclamation, irrigation, and cultivation, as required by the desert land law.

(3) All such applications for relief must be accompanied by an application service fee of $10 which will not be returnable.

(c) *Conditions for extensions of time.* (1) To entitle an entryman to the benefits of the first of the last three paragraphs of section 5 of the act of

March 4, 1915, as amended, the following conditions must exist: (i) The entry must be a lawful, pending entry made prior to March 4, 1915; (ii) the entryman must have complied with the requirements of the desert land law with reference to yearly expenditures and the submission of annual proofs thereof; (iii) there must be a reasonable prospect that if an extension of time is granted the claimant will be able to make the final proof of reclamation, irrigation, and cultivation as required by law, (iv) the case must be one in which an extension of time or a further extension can not properly be allowed under other laws; and (v) there must be established, some fact or facts constituting a reasonable excuse for the applicant's failure to comply with the law within the usual time and fairly entitling him, in justice and equity, to this form of relief.

(2) The existence of the conditions set forth in subparagraph (1) (i) and (ii) of this paragraph, can be determined by examination of the records of the Bureau of Land Management, but in order that applicants may have the benefit of every possible circumstance entitling them to equitable consideration, they are privileged to make such further showing as they may desire as to any moneys which they may have expended in improving the land but not used as the basis of annual proof.

(3) The existence of the conditions enumerated in subparagraphs (1) (iii), (iv) and (v) of this paragraph must be established in all cases by the statements filed in support of the application for relief.

(4) With regard to the conditions set forth in subparagraph (1) (i) of this paragraph, it must be shown what steps the applicant has taken to secure a water right; and either that he has secured such a right (so far as that is possible, under the State laws, in cases where beneficial application of the water to the land has not yet been made), or that there is no reason to doubt that he will be able to secure such a right before his final proof is due; that the source of water supply, if a natural stream, will, in ordinary seasons, furnish the amount of water needed by the claimant to reclaim the irrigable land in his entry after all appropriations prior to his have been satisfied; and, if water is to be taken from wells, that there is reason to believe that an adequate supply can be obtained from that source.

(5) If water is to be obtained through an irrigation company, association, or district upon which a favorable report has been made, and favorable action on such report has been taken, the existence of the condition in subparagraph (1) (iii) of this paragraph will be taken for granted, provided the applicant shows that he has become the owner of the required amount of stock or interest in the project, or taken the required steps to secure the inclusion of the land in the district, or that it will be entirely possible for him to do the one or the other, as the case may be.

(6) If an adverse report has been made on the irrigation project in question, or if adverse action thereon has been taken, the applicant may present such showing of facts as may tend to refute the findings made and the conclusions reached, whereupon, if the allegations seem to warrant such action, a hearing will be ordered to determine the merits of the case.

(7) The condition set forth in subparagraph (1) (iv) of this paragraph will be satisfied if the case does not come within the terms of any of the other acts of Congress providing for the allowance of extensions of time for submitting final proof on desert-land entries.

(8) The extension of time authorized by the act of March 4, 1915, is applicable only to entries made prior to the date of the act. Where the irrigation works intended to convey water to the land have been completed, or for any other reason, the claimant's inability to submit final proof can not be attributed to unavoidable delay in the construction of such irrigation works; where the cause of delay in submitting the final proof is the claimant's temporary inability to acquire water right; or where, on account of drought of greater or less duration, but not likely, in all probability, to be a permanent condition, the operation of a completed system of irrigation works has been hindered or delayed, an application for an extension of time under the first paragraph of the act of March 4, 1915, as amended by the act of March 21, 1918, above cited, can be entertained, except where the entered lands have been included within the exterior limits of a withdrawal or irrigation project under the act of June 17,

1902 (32 Stat. 388), and the submission of satisfactory final proof is being hindered or delayed thereby, so that the case comes within the provisions of the fifth section of the act of June 27, 1906 (34 Stat. 520; 43 U.S.C. 448).

(9) No application for extension of time can be allowed, however, if it appears that the claimant's inability to submit final proof as required by the desert-land law is due to his own neglect or default; nor will any such application be granted where it appears that there is no reasonable prospect that the applicant will be able to provide a supply of water sufficient to irrigate and permanently reclaim all the irrigable land embraced in his entry, because, in such a case, no extension of time can enable the entryman to comply with the requirements of the desert-land law.

(d) *Relief by homestead proof, or purchase.* The last two paragraphs of section 5 of the act of March 4, 1915 (38 Stat. 1161; 43 U.S.C. 337, 338) are designed to afford relief in cases of the kind last mentioned in the preceding section. The State Director is authorized, in his discretion, to permit the applicant to perfect his entry in the manner required of a homestead entryman, or to purchase the land on the terms specified, as the applicant may elect. The entry itself is not transmuted, however, but remains a desert-land entry, subject to a new kind of proof.

(e) *Conditions authorizing homestead proof and purchase.* (1) To entitle a claimant to relief under either of the last two paragraphs of section 5 of the act of March 4, 1915, as amended, it must be made to appear to the satisfaction of the authorized officer: (i) That the entry in question is a lawful pending entry, made prior to March 4, 1915; (ii) where application for relief is made on behalf of an assignee, that the entry was assigned to him prior to March 21, 1918; (iii) that the applicant or his assignors have, in good faith, expended the sum of $3 per acre in the attempt to effect reclamation of the entered land; and (iv) that there is no reasonable prospect that if the extension of time authorized under the provisions of this act, or any other existing law, were granted, the applicant would be able to secure water sufficient to effect reclamation of the land in his entry or any subdivision thereof.

(2) The conditions of subparagraph (1) (i) and (ii) of this paragraph can be determined from the records of the Bureau of Land Management.

(3) With regard to the condition of subparagraph (1) (iii) of this paragraph, any expenditure which the claimant can show that he has made in good faith and with a reasonable belief that it would tend to effect reclamation of the land will be acceptable even though such expenditure may not have been such as would satisfy the requirements for annual proof.

(4) With regard to the condition of subparagraph (1) (iv) of this paragraph, the applicant should show what steps he has taken for the purpose of acquiring a water right and with what result, what has been done by himself or others toward the development of a water supply and the construction of an irrigation system to bring the water to the land, the reasons for his failure to secure an adequate water supply, and his grounds for believing that there is no reasonable prospect of final success in acquiring such a supply. In this connection consideration will be given to any reports on file regarding any irrigation company or irrigation district from which applicant has been endeavoring to secure water and if it appears therefrom that there is no reasonable prospect that the applicant can secure a sufficient water supply, the existence of that condition will be taken for granted.

(f) *Notice of allowance of relief; election to purchase.* When any application for relief under the second of the last three paragraphs of section 5 of the act of March 4, 1915 (38 Stat. 1161; 43 U.S.C. 337), as amended, shall have been allowed by the manager, notice thereof will be served upon the claimant, advising him that he will be allowed 5 years from date of service of such notice within which to perfect his entry in the manner required of a homestead entryman, unless he shall, within 60 days from receipt of such notice, file in the district land office an election to perfect the entry within 5 years by purchase under the third paragraph, and pay to the manager, at time of election, the sum of 50 cents for each acre embraced in the entry. Such election, if filed, must be in writing, signed by the claimant, and his signature thereto must be witnessed by two persons, whose post-office addresses shall

be given. The election must bear the serial number of the entry to which it relates, and also the number of the receipt issued for the money paid in connection therewith.

(g) *Procedure for final proofs in relief cases.* In the submission and consideration of final proofs under the last two paragraphs of section 5 of the act of March 4, 1915, as amended, the usual course of procedure with regard to desert-land final proofs will be followed, so far as applicable. The notice of intention to submit proof, however, should indicate whether the entry is to be perfected as in homestead cases or by purchase.

(h) *Entries perfected by a compliance with homestead law.* (1) A claimant who has received permission to perfect his entry in the manner required of homestead entrymen may make proof at any time when he can show that residence and cultivation have been maintained in good faith for the required length of time and to the required extent.

(2) However, inasmuch as the homestead laws do not authorize the commutation of homesteads made under the Enlarged Homestead Acts, commutation proof will not be accepted upon any desert-land entry involving more than 160 acres. In addition to the original payment of 25 cents per acre at time of entry, a claimant who makes commutation proof must pay for the land at the regular "minimum price" of $1.25 per acre.

(3) Failure to submit final proof within the 5-year period allowed by the law will be grounds for the cancellation of the entry, unless good reason for the delay can be shown, in which event final certificate may be issued and the case referred to the Director, Bureau of Land Management, for confirmation.

(4) Those provisions of the homestead law which define the personal qualifications required of entrymen do not apply to cases of this kind, but the final proof must show that the claimant possesses the same qualifications as to citizenship and the amount of land entered by him or assigned or patented to him, under the agricultural public land laws, as in the case of those who make ordinary final proof on desert-land entries.

(i) *No assignment allowed after relief has been granted.* After a desert-land entry has been authorized to be perfected either in the manner of a homestead entry or by purchase, no assignment thereof will be allowed, for the reason that the benefits of the last two paragraphs of section 5 of the act of March 4, 1915, as amended, by the act of March 21, 1918, are not available to assignees under assignments made subsequently to the date of the act, as amended; and in the final adjudication of entries being perfected under the provisions of said paragraphs the same rules will be observed, as to proof of nonalienation, as in homestead cases.

(j) *Residence and improvements for homestead proof.* (1) If not already residing on his desert-land entry, the claimant must establish residence thereon within 6 months from the date of receiving the notice advising him that he will be permitted to perfect his entry under the second of the last three paragraphs of section 5 of the act of March 4, 1915, as amended, unless such period be extended as permitted by the homestead law.

(2) Residence upon the land must be continuously maintained for a period of 3 years from and after the date of its establishment. During each year the claimant may be absent for two periods only, the aggregate thereof not to exceed 5 months. Actual residence must be maintained for the remaining 7 months of each year. If commutation proof is submitted, substantially continuous residence upon the land for a period of 14 months must be shown, together with the cultivation of not less than one-sixteenth of the area of the entry, unless a reduction of the area required to be cultivated be allowed. The requirements as to the period of residence and amount of cultivation are those of the act of June 6, 1912 (37 Stat. 123; 43 U.S.C. 164, 169, 218), or the "3-year homestead law."

(3) If a claimant establishes residence upon his entry prior to the allowance of his application for relief, and continues to maintain it in good faith as required by the homestead law, full credit will be allowed for the period during which such residence is so maintained.

(4) Leaves of absence and credit for military service will be allowed upon the same terms and conditions as in case of a homestead entry.

(5) The claimant must have a habitable house upon the land at the time of

submitting final proof. Other improvements should be of such character and amount as are sufficient to show good faith.

CROSS REFERENCE: For residence and cultivation requirements under the homestead laws, see §§ 2211.2(a) to 2211.2-3(c)(3).

(k) *Cultivation for homestead proof.* Cultivation of the land for at least 2 years is required, and this must generally consist of actual breaking of the soil, followed by planting, sowing of seed, and tillage for a crop other than native grasses. However, tilling of the land, or other appropriate treatment, for the purpose of conserving the moisture with a view of making a profitable crop the succeeding year, will be deemed cultivation within the terms of the act (without sowing of seed) where that manner of cultivation is necessary or generally followed in the locality. During the second year not less than one-sixteenth of the area entered must be actually cultivated, and during the third year, and until final proof, cultivation of not less than one-eighth must be had. These requirements are applicable to all cases, without regard to the area or location of the entry. The period of cultivation, like that of residence, may begin before the allowance of the application for relief; credit for all cultivation, if in accordance with the provisions of the 3-year homestead law, will be allowed, without regard to the time when it was performed.

(l) *Homestead proof on entries in Utah and Idaho.* If the entry is situated in the State of Utah or Idaho, and the lands involved have been, or shall be, designated as being of the character subject to entry under the sixth section of the act of February 19, 1909 (35 Stat. 639; 43 U.S.C. 218), as amended, or June 17, 1910 (36 Stat. 531; 43 U.S.C. 219), respectively, the entryman may avail himself of the privileges of these sections, upon a proper showing of the character of the land, as required of a homestead applicant thereunder, in which event residence need not be maintained upon the land, but the amount of cultivation required is double that in ordinary cases and must be shown during a period of 4 years.

(m) *Heirs and devisees; reduction of cultivation.* (1) If an entryman dies before being authorized to exercise the rights conferred by the last two paragraphs of section 5 of the act of March 4, 1915 (38 Stat. 1161; 43 U.S.C. 337, 338), as amended, or after such authorization but before he has perfected his entry, his rights will pass to those persons who would inherit his lands according to the laws of the State wherein the entry is located or, if he leaves a will, to those to whom he devises such rights. Applications for the benefits of the said act of March 4, 1915, may be filed, and proofs thereunder may be submitted either by one of the heirs in behalf of all, by a guardian of the heirs' estate if they themselves are minors, or by the entryman's executor or administrator, acting under the supervision of the proper probate court.

(2) The heirs or devisees will not be required to settle or reside upon the land, but must show that the land has been cultivated and improved by them or on their behalf, as required by the homestead law, for such period as will, when added to the entryman's period of compliance with the law, aggregate the required term of 3 years. If they desire to commute the entry, they must show a 14 months' period of such residence and cultivation on the part of themselves or the entryman, or both, as would have been required of him had he survived.

(3) With regard to the reduction of the required area of cultivation, the same rules and procedure will be followed as in homestead cases.

(n) *Fees.* The same fees, and no others, may be charged by managers upon submission of final proofs under section 5 of the act of March 4, 1915, as amended, as upon submission of ordinary desert-land proofs. No commissions may be charged under any circumstances and no testimony fees unless the proof is taken at the land office.

(o) *Entries perfected by purchase.* If claimant elects to perfect his entry under the last paragraph of section 5 of the act of March 4, 1915 (38 Stat. 1161; 43 U.S.C. 338), as amended, he must, within 5 years from the date of his election and payment of the sum of 50 cents per acre, make final proof and pay to the manager the further sum of 75 cents for each acre of land embraced in his entry. The final proof, in order to be acceptable, must show that, at the date of the proof, the claimant has upon the tract permanent

improvements conducive to the agricultural development thereof, of the value of at least $1.25 per acre, and that he has in good faith used the land for agricultural purposes for at least 3 years. Under said last paragraph grazing will be regarded as an agricultural use, provided it be established that the land is best suited to that purpose and has been so used in good faith. Actual residence on the land need not be shown.

(p) *Credit for improvements used as the basis for annual proof.* Improvements made during the first 3 years of the life of the entry and used as the basis of annual proof, if permanent in character and conducive to the agricultural development of the land, may be counted as improvements required to be shown under the last paragraph of section 5 of the act of March 4, 1915, as amended, provided their character and continued existence are satisfactorily established by the final proof; but no water rights or irrigation ditches will be recognized for this purpose unless it is clearly shown that they have been made actually conducive to the agricultural development of the land, or a portion thereof, and that that fact is not inconsistent with the truth of the claimant's preliminary showing that there was no reasonable prospect that he could acquire a sufficient water supply to irrigate the irrigable land of his entry.

(q) *Penalty for failure to make final proof and payment.* If a claimant fails to make final proof and payment, as required by the last paragraph of section 5 of the act of March 4, 1915, as amended, within the 5-year period, all sums theretofore paid by him will be forfeited and the entry canceled.

(r) *Forms of proofs.* Final proofs under the second of the last three paragraphs of section 5 of the act of March 4, 1915, as amended, may be made on the forms used in homestead cases. For final proofs to be made under the last paragraph special forms have been provided.

§ 2226.2–8 Act of February 14, 1934.

(a) *Applications for relief; initial payment required.* (1) The act of February 14, 1934 (48 Stat. 349; 43 U.S.C. 339), entitled "An act to amend an act approved March 4, 1929 (45 Stat. 1548), entitled 'An act to supplement the last three paragraphs of section 5 of the act of March 4, 1915 (38 Stat. 1161), as amended, by the act of March 21, 1918 (40 Stat. 458),'" grants relief to desert-land entrymen, as set forth in this section and § 232.58.

(2) This act applies to all pending desert-land entries made prior to July 1, 1925, under which the entryman or his duly qualified assignee under an assignment made prior to the date of this act has in good faith expended the sum of $3 per acre in the attempt to effect reclamation of the land and where there is no reasonable prospect that he would be able to secure water sufficient to effect reclamation of the irrigable land or any legal subdivision thereof.

(3) Desert-land entries made prior to March 4, 1915, and pending February 14, 1934, are entitled to the relief granted by the act of March 4, 1915, as amended, or by the provisions of this act. Desert-land entries made since March 4, 1915, and prior to July 1, 1925, and pending February 14, 1934, are entitled only to the relief provided for in this act.

(4) In all applications for relief of desert-land entries made prior to March 4, 1915, it should be specifically stated whether the relief is sought under the provisions of the act of March 4, 1915, or under the provisions of said act of February 14, 1934.

(5) The showing as to the right to such relief must be the same as that required by § 2226.2–7(b). Applications for relief hereunder must be filed in the land office for the district in which the land embraced in the particular entry is situated.

(6) When any application for relief under the provisions of this act shall have been approved by the manager, notice, by registered mail, will be served upon the claimant, of such approval that he will be allowed 90 days from date of receipt of such notice within which to pay to the manager 25 cents an acre for the land embraced in the entry and to file an election to perfect title to the entry under the provisions of this act, and that if he fails within the time allowed to make said initial payment of 25 cents per acre, the entry will be canceled; that he will be allowed 1 year from the date of the filing of such election to pay the manager the additional amount of 75 cents an acre; and that, in case the final payment be not made within the time prescribed, the entry will be canceled and all money theretofore paid will be forfeited.

(7) Should any claimant fail to pay said 25 cents per acre and file said election within the 90-day period, the entry will be canceled and the case closed without further notice.

(b) *Publication and proof; final payment required.* (1) To perfect title to the entry, under the act of February 14, 1934, the claimant shall file with the manager a notice of intention to do so, and the manager will order the publication thereof in the same manner as to other desert-land cases and in the prescribed form.

(2) Publication, proof thereof and the required additional payment of 75 cents per acre should be made within 1 year from the date of the filing of the election mentioned in the preceding section, it being expressly stated in said act of February 14, 1934, that said additional payment of 75 cents per acre should be paid within 1 year from the date of the filing of the election to perfect title to the entry under said act, with the proviso "That in case the final payment be not made within the time prescribed, the entry shall be canceled and all money theretofore paid shall be forfeited." There is no provision of law whereby extension of time to make this payment may be granted.

(3) Where relief has heretofore been granted in desert-land entries made prior to March 4, 1915, and such entries are intact upon the records claimants may if they so desire, take advantage of the provisions of this act.

(4) Where relief has been granted in desert-land entries under the original act of 1929 and prior to February 14, 1934, date of passage of act amendatory thereof, and such entries are intact upon the records of the Bureau of Land Management and all of the payments required to be made by said original act of 1929 have not been completed prior to the date of said amendatory act, in all such cases the total amount to be collected of such entrymen as a condition precedent to the patenting of their entries will be at the rate of $1 per acre, instead of $2.

§ 2226.3 Payments.

§ 2226.3–1 Collection of purchase money and fees; issuance of final certificate.

(a) At the time of making final proof the claimant must pay to the manager the sum of $1 per acre for each acre of land upon which proof is made. This, together with the 25 cents per acre paid at the time of making the original entry, will amount to $1.25 per acre, which is the price to be paid for all lands entered under the desert land law, except where the entry is perfected by commutation or purchase under the act of March 4, 1915, as amended and supplemented. (See § 2226.2–7 (o) and (r).)

(b) If the entryman is dead and proof is made by anyone for the heirs, no will being suggested in the record, the final certificate should issue to the heirs generally, without naming them; if by anyone for the heirs or devisees, final certificate should issue in like manner to the heirs or devisees.

(c) When final proof is made on an entry made prior to the act of March 28, 1908 (35 Stat. 52; 43 U.S.C. 324, 326, 333), for unsurveyed land, if the land is still unsurveyed and such proof is satisfactory, the manager will approve same without collecting the final payment of $1 an acre and without issuing final certificate. Fees for reducing the final-proof testimony to writing should be collected and receipt issued therefor if the proof is taken before the manager. As soon as the plat or plats of any township or townships previously unsurveyed are filed in the land office the manager will examine his records for the purpose of determining, if possible, whether or not, prior to the passage of the act of March 28, 1908, any desert-land entry of unsurveyed land was allowed in the locality covered by the said plats; and if any such entries are found intact, he will call upon the claimants thereof to file a statement of adjustment, corroborated by two witnesses, giving the correct description, in accordance with the survey of the lands embraced in their respective entries.

(d) If the final proof has been made upon any desert-land entry so adjusted and the records show that such proof has been found satisfactory and no conflicts or other objections are apparent, the manager will allow claimant 60 days within which to make final payment for the land.

§ 2226.3–2 Amounts to be paid.

No fees or commissions are required of persons making entry under the desert-land laws except such fees as are paid to the officers for taking the affidavits and

proofs. Unless the entry be perfected under the act of March 4, 1915 (38 Stat. 1161; 43 U.S.C. 335, 337, 338), or February 14, 1934 (48 Stat. 349; 43 U.S.C. 339), the only payments made to the Government are the original payment of 25 cents an acre at the time of making the application and the final payment of $1 an acre, to be paid at the time of making the final proof. Where final proofs are made before the manager in California, Oregon, Washington, Nevada, Colorado, Idaho, New Mexico, Arizona, Utah, Wyoming, and Montana, he will be entitled to receive jointly 22½ cents for each 100 words of testimony reduced to writing; in all other States he will be allowed 15 cents per 100 words for such service. The United States commissioners, judges, and clerks are not entitled to receive a greater sum than 25 cents for each oath administered by them, except that they are entitled to receive $1 for administering the oath to each entryman and each final-proof witness where final-proof testimony has been reduced to writing by them.

Amended by Circ 2152

§ 2226.4 Desert-land entries within a reclamation project.

§ 2226.4–1 Conditions excusing entrymen from compliance with the desert-land laws.

(a) *Section 5; act of June 27, 1906.* By section 5 of the act of June 27, 1906 (34 Stat. 520, 43 U.S.C. 448), it is provided that any desert-land entryman who has been or may be directly or indirectly hindered or prevented from making improvements on or from reclaiming the lands embraced in his entry, by reason of the fact that such lands have been embraced within the exterior limits of any withdrawal under the Reclamation Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 372 et seq.) will be excused during the continuance of such hindrance from complying with the provisions of the desert-land laws.

(b) *Persons excused from compliance with the desert-land laws.* Section 5 of the act of June 27, 1906, applies only to persons who have been, directly or indirectly, delayed or prevented, by the creation of any reclamation project, or by any withdrawal of public lands under the reclamation law, from improving or reclaiming the lands covered by their entries.

(c) *Statement required to warrant excuse.* No entryman will be excused under this act from a compliance with all of the requirements of the desert-land law until he has filed in the land office for the district in which his lands are situated a statement showing in detail all of the facts upon which he claims the right to be excused. This statement must show when the hindrance began, the nature, character, and extent of the same, and it must be corroborated by two disinterested persons, who can testify from their own personal knowledge.

(Sec. 10, 32 Stat. 390; as amended; 43 U.S.C. 373)

§ 2226.4–2 Annual proof.

(a) *Extension of time.* Inasmuch as entrymen are allowed 1 year after entry in which to submit the first annual proof of expenditures for the purpose of improving and reclaiming the land entered by them, the privileges of the act of June 27, 1906, are not necessary in connection with annual proofs until the expiration of the years in which such proofs are due. Therefore, if at the time that annual proof is due it can not be made, on account of hindrance or delay occasioned by a withdrawal of the land for the purpose indicated in the act, the applicant will file his statement explaining the delay. As a rule, however, annual proofs may be made, notwithstanding the withdrawal of the land, because expenditures for various kinds of improvements are allowed as satisfactory annual proofs. Therefore an extension of time for making annual proof will not be granted unless it is made clearly to appear that the entryman has been delayed or prevented by the withdrawal from making the required improvements; and, unless he has been so hindered or prevented from making the required improvements, no application for extension of time for making final proof will be granted until after all the yearly proofs have been made.

(b) *When application for extension of time should be filed.* An entryman will not need to invoke the privileges of the act of June 27, 1906, in connection with final proof until such final proof is due, and if at that time he is unable to make the final proof of reclamation and cultivation, as required by law, and such inability is due, directly or indirect-

ly, to the withdrawal of the land on account of a reclamation project, the statement explaining the hindrance and delay should be filed in order that the entryman may be excused for such failure.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 373)

§ 2226.4–3 Time extended to make final proof.

When the time for submitting final proof has arrived and the entryman is unable, by reason of the withdrawal of the land, to make such proof, upon proper showing, he will be excused and the time during which it is shown that he has been hindered or delayed on account of the withdrawal of the land will not be computed in determining the time within which final proof must be made.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 373)

§ 2226.4–4 Beginning of period for compliance with the law.

If, after investigation the irrigation project has been or may be abandoned by the Government, the time for compliance with the law by the entryman shall begin to run from the date of notice of such abandonment of the project and of the restoration to the public domain of the lands which had been withdrawn in connection with the project. If, however, the reclamation project is carried to completion by the Government and a water supply has been made available for the land embraced in such desert-land entry, the entryman must, if he depends on the Government's project for his water supply, comply with all provisions of the reclamation law, and must under the act of June 6, 1930 (46 Stat. 502; 43 U.S.C. 448), relinquish or assign in not less than 2 years after notice all the land embraced in his entry in excess of one farm unit, and upon making final proof and complying with the regulations of the Department applicable to the remainder of the irrigable land of the project and with the terms of payment prescribed in the reclamation law, he shall be entitled to patent as to such retained farm unit, and final water-right certificate containing lien as provided for by the act of August 9, 1912 (37 Stat. 265; 43 U.S.C. 541–546), act of August 26, 1912 (37 Stat. 610; 43 U.S.C. 547), and the act of February 15, 1917 (39 Stat. 920; 43 U.S.C. 541), or to patent without a lien if provision therefor shall have been made as provided for by the act of May 15, 1922 (42 Stat. 541; 43 U.S.C. 511–513).

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 373)

§ 2226.4–5 Assignment of desert-land entries in whole or in part.

(a) *Act of July 24, 1912.* Under the act of July 24, 1912 (37 Stat. 200; 43 U.S.C. 449), desert-land entries covering lands within the exterior limits of a Government reclamation project may be assigned in whole or in part, even though water-right application has been filed for the land in connection with the Government reclamation project, or application for an extension of time in which to submit proof on the entry has been submitted, under the act of June 27, 1906 (34 Stat. 520; 43 U.S.C. 448), as amended by the act of June 6, 1930 (46 Stat. 502; 43 U.S.C. 448), requiring reduction of the area of the entry to one farm unit.

(b) *Amendment of farm-unit plat after partial assignment.* Where it is desired to assign part of a desert-land entry which has been designated as a farm unit, application for the amendment of the farm-unit plat should be filed with the official in charge of the project, as in the case of assignments of homestead entries. (See § 2211.7–4(a)(3) to (5).) The same disposition of amendatory diagrams will be made and the same procedure followed as provided for assignments of homestead entries.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 373)

§ 2226.4–6 Desert-land entryman may proceed independently of Government irrigation.

Special attention is called to the fact that nothing contained in the act of June 27, 1906 (34 Stat. 520; 43 U.S.C. 448), shall be construed to mean that a desert-land entryman who owns a water right and reclaims the land embraced in his entry must accept the conditions of the reclamation law, but he may proceed independently of the Government's plan of irrigation and acquire

title to the land embraced in his desert-land entry by means of his own system of irrigation.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 373)

§ 2226.4–7 Disposal of lands in excess of 160 acres.

Desert-land entrymen within exterior boundaries of a reclamation project who expect to secure water from the Government must relinquish or assign all of the lands embraced in their entries in excess of one farm unit in not less than 2 years after notice through the land office, must reclaim one-half of the irrigable area covered by their water right in the same manner as private owners of land irrigated under a reclamation project, and also comply with the regulations of the Department applicable to the remainder of the irrigable land of the project.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 373)

§ 2226.4–8 Cancellation of entries for nonpayment of water-right charges.

All homestead and desert-land entrymen holding land under the reclamation law must, in addition to paying the water-right charges, reclaim the land as required by the reclamation law. Homestead entrymen must reside upon, cultivate, and improve the lands embraced in their entries for not less than the period required by the homestead laws. Desert-land entrymen must comply with the provisions of the desert-land laws as amended by the reclamation law. Failure to make payment of any water-right charges due for more than 1 year, will render the entry subject to cancellation and the money paid subject to forfeiture, whether water-right application has been made or not.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 373)

This circular replaces and supersedes all of Circulars 2144, 2103, 2011, and 1991, and the portions of Circulars 2110 and 2001 pertaining to 43 CFR Part 232 and the portion of Circular 2142 pertaining to subpart 2226.

GPO 843-282